

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

JANET JENKINS, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 2:12-CV-00184
)	
KENNETH L. MILLER, ET AL.)	
)	
Defendants.)	

**DEFENDANTS LIBERTY COUNSEL, INC. AND RENA LINDEVALDSEN'S
VERIFIED REPLY IN SUPPORT OF THEIR CROSS-MOTION
FOR SANCTIONS AGAINST PLAINTIFF AND HER COUNSEL**

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INTRODUCTION

In her Consolidated Reply in Support of her Second Motion to Compel and Response in Opposition to Defendants' Cross-Motion for Sanctions (hereinafter "Reply"), Plaintiff Janet Jenkins ("Jenkins") confirms that she has now completed her review of the full and complete document production of Defendants Liberty Counsel and Rena Lindevaldsen ("Defendants"). (Declaration of T. Clemmons, dkt. 492-7, ¶¶ 6-11). Having concluded her expansive fishing expedition and found nothing to substantiate her concocted conspiracy claims involving these Defendants, Jenkins re-doubles her efforts to now turn this case into a case about discovery "abuses" and "delay." The insurmountable problem for Jenkins, however, is that the plain record roundly disproves her baseless charges. Unfortunately, Jenkins' response is to contort that record to prop up her false narrative, and even to mislead the Court with outright fabrications and falsehoods.

It brings Defendants no pleasure to bring these abuses to the Court's attention. Defendants would have much preferred to spend their time during this pandemic on things that matter, rather than on exposing Jenkins' subterfuge. Defendants regret that Jenkins has wasted a colossal amount of their and the Court's time with a Second Motion to Compel that is moot, frivolous and fraudulent. The Court should deny that motion, and impose an appropriate sanction against Jenkins and her counsel to make Defendants whole and deter future abuses.

LEGAL ARGUMENT

I. JENKINS' SECOND MOTION TO COMPEL IS SANCTIONABLE BECAUSE JENKINS ADMITS HER PAST MISREPRESENTATIONS AND PRESENTS ADDITIONAL WILFULL MISREPRESENTATIONS TO THE COURT.

A. Jenkins Essentially Admits That She Has Misrepresented Defendants' Discovery Conduct to Cast Defendants in a Negative Light.

Jenkins has nothing to say in response, and essentially admits all but one of the multiple misrepresentations that Defendants demonstrated she made to support her unfounded claims for sanctions. (*Compare* Defendants' Opp., dkt. 484, pp. 7-9, ¶¶ 17-22 and pp. 22-24, ¶¶ 81-86 *with* Jenkins' Reply at 20). Jenkins tries to sweep her willful misrepresentations under the rug as "petty squabbles" unworthy of the Court's attention (Reply at 20), as if her entire Second Motion to Compel, which is both moot and improper, were not the pettiest of all squabbles.

Jenkins' half-hearted attempt to rebut just one of her multiple misrepresentations actually demonstrates that she has no excuse for misleading the Court. Jenkins claims that she sent her October 31, 2019 communication to Defendants via paper mail, and it is Defendants' fault that she didn't send an email courtesy copy because Defendants had not yet consented to receiving service of pleadings electronically. (Reply at 20). This is clever subterfuge. The problem is not **why** Jenkins sent her communication by paper mail, even though that is a good question, since the parties were routinely communicating via e-mail before and after October 31, 2019. (Defendants' Opp., dkt. 484, pp.22-23, ¶ 82). Instead, the problem is that, in recounting this narrative to the Court, and in arguing that Defendants were uninterested, unprofessional and unresponsive because they had ignored this communication and did not respond as of one week later (on November 6, 2019), Jenkins purposefully chose **not** to tell the Court that she sent her communication by paper mail. The reason for this concealment is simple: telling the Court of the paper mailing would have provided a reasonable, alternative explanation for Defendants' "delay," gutting Jenkins' deceptive

narrative – namely, that Defendants did not respond by November 6 because they did not even receive Jenkins’ paper mail until November 7. (*Id.*) That Jenkins chose to send her communication via paper mail does not answer the question as to why she withheld this critical fact from the Court. Jenkins’ misrepresentations – both past and present – demand not only the denial of her deceptive Second Motion to Compel, but also the imposition of appropriate sanctions.

B. Jenkins Manufactures Additional, Willful and Demonstrable Misrepresentations to Support Unmerited Sanctions Against Defendants.

Jenkins doubles down and compounds the misrepresentations in her Second Motion to Compel with new, willful and demonstrable misrepresentations in her Reply, designed to sustain her crumbling narrative that Defendants “dragged their feet” and “abused” the discovery process.

1. Jenkins Knowingly Misrepresents Defendants’ Document Production As Untimely, When, in Fact, Defendants Timely Produced Their Documents After the Court Ordered Production, and Faster Than Plaintiff’s Own Production.

Jenkins’ entire “delay” theory for seeking the extraordinary sanction of privilege waiver is built on a house of cards that does not withstand even cursory scrutiny. Jenkins essentially admits, as she must, that “four-and-a-half months” from the Court’s order compelling Defendant’s document production and until Defendants completed their 42,000-page production is a reasonable amount of time, and by no means sanctionable. (Reply at 6).¹ Undeterred, Jenkins redoubles her

¹ Jenkins does invoke Fed. R. Civ. P. 34(b)(2)(A) to suggest that Defendants were obligated to **produce their documents** within 30 days of the Court’s order. (Reply at 5). However, by its plain terms, this rule only requires that **the written responses** to document requests be served within 30 days, *id.*, and is not applicable here because, by the time the Court issued its production order, Defendants had served their written responses many months prior. Instead, Fed. R. Civ. P. 34(b)(2)(B) governs the timing of the **document production**, and provides that responsive documents are to be produced “no later than the time for inspection specified in the request or another reasonable time **specified in the response.**” *Id.* (emphasis added). Thus, the timing of Defendants’ production wasn’t even solely within the purview of Jenkins, *id.*, and wasn’t specified in the Court’s order in any event. Therefore, four-and-a-half months to review and produce 42,000+ pages of documents was eminently reasonable, and timely.

efforts to seek sanctions based upon her **First** Motion to Compel, covering the “previous sixteen months of delay.” (Reply at 6). But, in their Opposition, Defendants pointed out that Jenkins didn’t even seek, and the Court didn’t award, sanctions in her First Motion to Compel. (Dkt. 484 at 29-30). More importantly, Defendants also point out that they had good faith reasons for resisting Jenkins’ overbroad discovery requests, and opposing her First Motion to Compel, and, critically, that the Court actually agreed with Defendants and substantially narrowed some of Jenkins’ document requests. (*Id.*) Thus, even though Defendants partially prevailed on Jenkins’ First Motion for Sanctions, and even though the Court rightfully found no bad faith in Defendants’ discovery positions and awarded no sanctions, now Jenkins seeks to re-litigate **that** First motion under the guise of her **Second** Motion to Compel. This is because, without the time the parties spent disputing and resolving the discovery issues raised in the First Motion to Compel, even Jenkins herself realizes that her complaints about the “four-and-a-half months” of “delay” that followed are ludicrous.

And, for good measure, Jenkins continually peppers her charges of “delay” with accusations that the “purpose and effect” of Defendants’ so-called “delay” is to “run out the discovery clock.” (Reply at 4). Except that there isn’t one. As Defendants have pointed out, there is no discovery deadline, no dispositive motion deadline, and no trial currently scheduled by the Court. Indeed, as recently as last week, Jenkins filed a motion stay the May 15, 2020 deadline for the parties to even submit **a schedule** (*i.e.*, “the clock”) to the Court (dkt. 508), and yet Jenkins stridently accuses Defendants of running out that yet-to-be-entered clock. Jenkins’ Second Motion to Compel is entirely contrived, and she can articulate absolutely no prejudice either from Defendants’ good-faith resistance to her overboard discovery requests preceding Jenkins’ First

Motion to Compel, or from Defendants' speedy, full and complete production of their voluminous documents in the four-and-a-half months after its adjudication by the Court.

Speaking of "delay" and "running out the clock," about one month **after** filing her Second Motion to Compel on February 24, 2020, Jenkins produced some 3,436 pages of documents on March 20, 2020. (Soto Email, attached hereto as **Exhibit 1**). Then, the following month on April 10, 2020, Jenkins produced yet another 1,569 pages of documents. (Soto Email, attached hereto as **Exhibit 2**). A large number of these documents go back many years, some to 2009 or earlier, and many of them were authored by Jenkins or her counsel, and thus have been in her possession all along. Thus, these are not "supplemental" productions in the true sense of the word, because these are not newly created, acquired or discovered documents. Instead, these are documents that should and must have been produced long ago. Defendants served their document requests on Plaintiff on **August 29, 2019**. In March and April 2020, **seven and eight months later**, Jenkins is **still** producing documents responsive to those requests. And at the same time, Jenkins has the temerity to seek sanctions against Defendants, and to waste this Court's time during a pandemic, because Defendants took **four-and-a-half months** to complete their 42,000-page production after the Court ordered it.

Jenkins and her counsel have gone too far. The Court should sanction this abusive conduct.

2. Jenkins Knowingly Misrepresents Defendants' Document Production As Incomplete, When, In Fact, Defendants Have Made a Full and Complete Production.

Next, to prop up her "delay" and "abuse" false narrative, Jenkins contends that "Defendants have not produced all responsive documents." (Reply at 9-10). Admittedly, from the 42,000+ pages of documents produced by Defendants, Jenkins can only muster **one** solitary "**single example** ... to demonstrate the high probability that Defendants continue to withhold documents."

(*Id.* at 10 (emphasis added)). And the problem with this “single example” is that it is knowingly manufactured by Jenkins and premised on a demonstrable sleight of hand.

Jenkins points out that “Lindevaldsen told this Court at least three times under penalty of perjury that, after the kidnapping in late September 2009, she ‘continued to try to communicate with Lisa Miller by email and voicemail,’” but complains that Liberty Counsel’s privilege log contains “only two emails” dated after the disappearance, and Jenkins says that neither one of these emails “inquire[d] about Lisa Miller’s whereabouts.” (*Id.* at 9-10). From this exposition, Jenkins alleges that either Lindevaldsen’s sworn representation “‘that she continued to try to communicate with Lisa Miller by email’ was patently false,” or Defendants are hiding those documents. (*Id.* at 10).

Neither of Jenkins’ alternatives is true. Instead, her elaborate set-up is fraudulent. In her sworn declarations from which Jenkins mis-quotes, Lindevaldsen never testified that she “continued to try to communicate with Lisa Miller by email” “**about Lisa Miller’s whereabouts,**” as Jenkins contends. Instead, Lindevaldsen testified that:

- “I continued to try and communicate with her [Lisa Miller] by email and voicemail as I remained under a continuing legal obligation to try and **keep my client informed of the court proceedings.**” (Lindevaldsen Decl., dkt 65-6, p.4, ¶ 9 (emphasis added));
and
- “In December of 2009, I accurately told the Vermont Family Court that Lisa had stopped contacting me, even as I continued to leave her voicemail or email messages

concerning her pending legal matters.” (Lindevaldsen Decl., dkt. 213-2, p.2, ¶ 4 (emphasis added)).²

The two entries in Liberty Counsel’s privilege log cited by Jenkins are fully consistent with Lindevaldsen’s testimony, because they both indicate that the privileged document is an “attempted email correspondence” from Lindevaldsen to Miller “to remind client of outstanding need for information and instruction regarding visitation that must be conveyed to [Jenkins] in custody litigation.” (Liberty Counsel Privilege Log, dkt. 484-3, entries ## 112, 155 (cited by Jenkins in her Reply at 10)). Thus, Lindevaldsen previously testified truthfully that she attempted to communicate with Lisa Miller “concerning her pending legal matters” and to “keep her informed of the court proceedings” after Miller’s sudden disappearance, and Defendants have logged post-disappearance correspondence that does **exactly** that. However, to manufacture “recalcitrance” and “shell game” “tactics,” Jenkins falsely tells the Court that Lindevaldsen’s sworn affidavits were about something else (*i.e.*, supposed email communications about Miller’s whereabouts), and say something that they don’t actually say.

This is certainly **not** accidental. Lindevaldsen’s sworn declarations are **very** clear about the subject of the referenced email communications (*i.e.*, the “pending legal matters”), which would have been readily apparent to Jenkins and the Court if Jenkins had accurately and fully quoted Lindevaldsen’s sworn testimony. But Jenkins quoted only so much of Lindevaldsen’s testimony showing that Lindevaldsen had attempted to communicate with Lisa Miller by email, and purposefully left out the very next words in the very same sentences to conceal the subject of those communications, so that Jenkins could make up her own subject and then claim that Defendants

² In the third declaration cited by Jenkins, Lindevaldsen did not make any new representations on this subject, but merely adopted and incorporated her prior testimony. (Lindevaldsen Decl., dkt. 238-3, p.2, ¶¶ 4-5).

failed to produce phantom documents about those made-up subjects that Lindevaldsen never testified about. This undeniable and purposeful sleight of hand is not only dishonest, but sanctionable.

With her “single example” exposed as a sham, Jenkins has nothing to substantiate her bare claim that Defendants have not made a complete production. All that the Court has are Defendants’ verified facts, demonstrating full and complete compliance with each of the categories of documents this Court has ordered them to produce. (Defendants’ Opp., dkt. 484 at 5-6).

At bottom, Jenkins actually admits that she has no evidence that Defendants are improperly withholding any documents. (Reply at 10 (“Plaintiffs should not be limited to the discovery that they can prove Defendants are withholding.”)). Yet, despite a complete absence of proof, Jenkins speculates that Defendants **must** be withholding something, because she hasn’t found anything to substantiate her concocted conspiracy as to these Defendants. (*Id.*) This is just as ludicrous as it sounds. Jenkins should be sanctioned for wasting Defendants’ and the Court’s time.

3. Jenkins Knowingly Misrepresents Defendants’ Production As “Overwhelmingly Filler,” When, in Fact, Defendants Produced to Jenkins Exactly What She Requested.

Next, to substantiate her “shell game” narrative, Jenkins falsely denigrates Defendants’ document production as “overwhelmingly filler,” (Reply at 7-9), when, in fact, Jenkins knows that Defendants produced exactly what she requested.

Jenkins complains as to “why did [Defendants] produce *The New England Primer*...?” (Reply at 9). The answer is simple, and known to Jenkins. **She** provided Defendants the search term “fag!” (among many others), and asked Defendants to produce to her every document they found with that term in it. (Clemons-Mihet Emails, dkt. 472-9 at 3, 5). Defendants complied, ran searches on their system, and retrieved several results, among which was this passage on page 94 in *The New England Primer*:

Why then should I fear Deaths grim look,
since Christ for me did die?
For King and Cæsar, Rich and Poor,
the force of Death, must trie.
When I am chained to the Stake,
and Faggots girt me round,

Thus, Defendants produced *The New England Primer* because **Jenkins asked for it**. And Jenkins admits, as she must, that each of the other items she now claims are “fillers” “might contain at least one of the agreed-upon search terms.” (Reply at 8). They do, in fact, contain the search terms that Jenkins herself provided and agreed upon, which is why these documents were produced.

Jenkins now claims that Defendants had an obligation to review each of the thousands of hits yielded by her own search terms (which Defendants did), and to actually **withhold** documents that contain her search terms but are otherwise not responsive to her document requests. This is mindboggling. First, Jenkins has never shared this peculiar expectation with Defendants prior to raising it with the Court – not when negotiating or providing Defendants her search terms, and certainly not in any required meet and confer. Second, if Defendants had actually withheld hits containing Jenkins’ search terms, the Court can be assured that Jenkins – in typical fashion – would have complained about discovery “shell games” and “abusive” tactics. And third, neither of the two cases Jenkins cites comes even close to substantiating her purported requirement.

Jenkins’s first case, *Synventive Molding Sols., Inc. v. Husky Injection Molding Sys., Inc.*, 262 F.R.D. 365 (D. Vt. 2009) (Reply at 8), actually guts her claim. Jenkins cites the case only for the general and unremarkable proposition that “the producing party has a burden to select and produce the items requested rather than simply dumping large quantities of unrequested materials onto the discovering party along with the items actually sought.” (*Id.*) But *Synventive Molding* noted this general principle in the context of **paper** discovery production in response to regular discovery requests, and did **not** involve ESI document gathering and production in response to

electronic search terms requested by the discovering party. 262 F.R.D. at 370. And even for the paper production, the court actually **rejected** the discovering party's argument that the producing party had produced too much, concluding instead that "while [the general principle quoted above] may be true ... it appears that in this case Husky may have received, so to speak, **exactly what it asked for.**" *Id.* (emphasis added). So it is with Jenkins too – she received exactly what she requested via her own search terms. She (meaning her lengthy roster of lawyers) is just as capable as Defendants to review the documents containing the search terms **she herself provided** and to determine if they are of further use. Her unaided and unsupported complaint is groundless.

Jenkins' second case, *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251 (D. Md. 2008) (Reply at 8), is also of no use. This case dealt only the responsibility of a party to review hits from search terms to ensure that they do not contain privileged documents, or else it may waive privilege through inadvertent production. *Id.* at 254-55, 259-61. There is nothing in *Victor Stanley* or *Synventive Molding* that even suggests, let alone holds, that a producing party has the burden not only to run the search terms requested by the discovering party on its systems, and not only to review the hits for privilege, but then to also winnow out the results and to **affirmatively withhold documents that actually contain the discovering party's search terms.** Jenkins' argument is groundless.

Similarly silly is Jenkins' complaint that Defendants produced multiple copies of some documents. (Reply at 7). Jenkins herself has produced multiple copies of the same court pleadings in her own production. And she has no excuse, because she does not have multiple document custodians to contend with, as defendant Liberty Counsel does. Defendants ran Jenkins' search terms on their entire system, which included numerous document custodians. While Defendants made efforts to de-duplicate identical hits from the same custodian, Defendants simply did not

have the time or resources to review every page of every document from every custodian, and compare it with every other page from every other document from every other custodian, to ensure that seemingly identical copies were, in fact, identical. Not wanting to be further accused of discovery misconduct (this time for inadvertently withholding a non-identical copy), as Jenkins is so prone to doing by now, Defendants wanted to err on the side of caution and produced these documents from different custodians to Jenkins. Still, Jenkins is not satisfied.

Finally, Jenkins' claim that "84 percent" of Defendants' production "consists of publicly available court filings, duplicative documents, or non-Defendant publications" is wholly irrelevant, even if it were true (which Defendants do not concede). Jenkins requested all of these documents, and Defendants produced what she requested. Jenkins' own document production "suffers" from the same manufactured "flaw," because a large percentage of her production also consists of publicly filed documents, duplicative documents and publications other than her own. More importantly, even setting aside the "filler" that Jenkins requested but does not like, what Jenkins' irrelevant accusation necessarily concedes is that the remaining 6,500+ pages of documents are the "meat" she also requested – including all of Defendants' non-privileged communication with, about or concerning Lisa Miller, and all of Defendants' non-privileged communications with anyone on the specific dates requested by Jenkins. (*See* chart outlining Defendants' compliance with each category of documents the Court ordered them to produce, Defendants' Opp., dkt. 484 at 5-6).

Jenkins' manufactured complaints lack merit, and are worthy of sanctions.

4. Jenkins Knowingly Misrepresents the Nature of Defendants' Proper Redactions, Privilege Assertions, and Privilege Logs.

In addition to misrepresenting Defendants' document production and discovery conduct, Jenkins renews her misrepresentations regarding Defendants' privilege log, and piles on new, previously unaired misrepresentations and complaints.

First, Jenkins misrepresents that Defendants did not actually attempt to add detail to their March 9 privilege log, after receiving Jenkins' Second Motion to Compel with her unaired complaints to the January 10 privilege log. (Reply at 11). But to "prove" this contention, Jenkins deceptively invites comparison only between the first 71 entries in the March 9 log, and the same 71 entries in the January 10 log. (*Id.*) Defendants explained in their Opposition that, once they received Jenkins' secret complaints in her February 24, 2020 Second Motion to Compel, they endeavored to provide more detail in the subsequent entries provided in the March 9 log – that is entries 72-261, and not in the first 71 entries that were also included in the previous January 10 log, and as to which Jenkins had chosen to forego conferral efforts and trouble the Court. (Opposition, dkt. 484, p.18 ¶¶ 61-62). Jenkins tacitly admits that the entries drafted subsequent to her complaint (## 72-261) **do** contain more details in the document descriptions than the entries provided prior to her complaint (## 1-71). This is why a meet and confer would **not** have been futile, and this is why the Court should reject and dismiss Jenkins' complaints about entries ## 1-71 out of hand and require her to meet and confer with Defendants instead.

Second, Jenkins reprises her complaint that Defendants have not told her who some of the people referenced on the privilege log are, so that she can verify that they are within the attorney-client relationship. (Reply at 11-12 and n.6). But how are Defendants supposed to know which individuals Jenkins needs clarification about, since Jenkins has never identified them in a meet and confer or otherwise? This is not how cooperative discovery works. When a party needs to know a

detail about the other party's privilege log, such as the identity of an author or recipient of a privileged communication, the requesting party ask the producing party, and the producing party responds in good faith. (*See* argument and authorities in Defendants' Opposition, dkt. 484 at 33-35). This Court should not entertain Jenkins' unaided complaints.

Third, Jenkins admits that she failed to challenge Defendants' privilege log entries for Liberty University's non-party document production, and she tacitly admits that, as demonstrated by Defendants, those non-challenged privilege log entries contain the same type of information and level of detail as the log entries which Jenkins now challenges. (*Compare* Defendants' Opp., dkt. 484, pp. 18-19 ¶¶ 64-67, *with* Jenkins' Reply, p.12, n.7 second paragraph). Jenkins justifies her disparate reaction to the two logs by stating that she didn't need more detail to determine (incorrectly) that "any document" in the Liberty University production was not privileged. (Jenkins Reply, p. 12 n.7 (*italics in original*)). But this misses the point. Jenkins essentially admits that she had sufficient information in Defendants' privilege log as to the Liberty University documents to believe (incorrectly) that those documents were not privileged, and to mount her (failed) challenge to those privilege claims. (*Id.*) And Jenkins does not explain why the essentially identical information later provided by Defendants as to their own document production is insufficient. (*Id.*) Nor does Jenkins explain why Defendants were not justified to rely on Jenkins' previous acceptance of the Liberty University log as sufficient, and to provide the same type of information for their own log and document production. (*Id.*)

Fourth, as expected, Jenkins attempts to explain away the demonstrated fact that her own counsel provide essentially identical privilege logs in civil litigation as the log she challenges here, by stating that those other logs were "the result of negotiations between counsel in that case." (*Compare* Defendants' Opp., dkt. 484, pp. 19-20 ¶¶ 68-73, *with* Jenkins' Reply, p.12, n.7 third

paragraph). The glaring omission in Jenkins' "explanation" is why she did not engage in the same discussions and negotiations with Defendants here that her counsel engaged elsewhere regarding her demands and expectations of privilege logs different from her own. Instead, Jenkins ran straight to the Court. This is sanctionable.

Fifth, Jenkins attempts to explain away her unclean hands, and her complete failure to provide her own privilege log, even after she promised that she would provide one, by claiming that she has "objected as unduly burdensome the production of a privilege log cataloguing the years of communications between Jenkins and her attorneys in the Vermont and Virginia custody disputes." (Jenkins' Reply, p.12, n.7 fourth paragraph). Jenkins surely can appreciate the rich irony and hypocrisy of her position: Defendants lodged **the same exact objection** in response to her requests, which she successfully challenged in her First Motion to Compel, requiring Defendants to undertake the very burden she now complains of.³ What's more, even though she didn't request and the Court did not award sanctions for Defendants' good faith objection to this burden in Jenkins' First Motion to Compel, **now** Jenkins is seeking draconian waiver sanctions against Defendants for having taken the same exact position on privilege log burdens that she takes now. The Court cannot countenance this unbridled duplicity.

Sixth, and finally, Jenkins takes issue with **two** pages she identifies out of 42,000+ produced by Defendants which contain limited privilege redactions, and complains that they are not included on a privilege log. (Reply at 12-13). However, all of the information that would have gone in a privilege log, such as the date or the document, its sender and recipients, and the subject

³ See e.g., Jenkins' First Motion to Compel, dkt. 361 at 8, complaining about Defendants' objection that "It would be too burdensome ... to require Defendant [law firm] to sift through all of its communications with [its client] between 2002 and 2209 and to catalogue them individually as privileged." This is the **same exact burden** Jenkins' claims now.

matter can be clearly derived from the unredacted information in these two documents. (*See e.g.*, dkts. 492-5, 492-6). Thus, it would serve no purpose to also include this same information on a redundant privilege log. Indeed, by producing the documents and redacting only the few privileged words, Defendants provided Jenkins with a lot more additional information and detail than she would have received in a privilege log. Moreover, like most of her other complaints, Jenkins has never raised this issue with Defendants prior to raising it with the Court.

Jenkins' substantive challenge to the privilege redactions in these two documents fails even on cursory review. In the first document (dkt. 492-5) Defendants redacted the name and private medical information of a non-party whose medical and sexual history is discussed in the document, without any relation to this case, as well as one sentence in which Lisa Miller makes a specific reference to Lindevaldsen, her lawyer, about Lindevaldsen's legal representation of her. (*Id.*) And in the second document (dkt. 492-6) various Liberty Counsel attorneys and staff are having an internal email discussion about civil disobedience, and in that context reveal the name and specific legal issues involved with a client (not Lisa Miller and having nothing to do with her case), including the advice given to that unrelated client. (*Id.*) Clearly this information is attorney-client privileged, and also comes under **the client's** First Amendment right to engage in issue advocacy anonymously. Contrary to Plaintiff's contention, this Court has never even entertained briefing, let alone issue a ruling, on the question of whether Liberty Counsel's First Amendment **clients** (other than Lisa Miller) have a right to remain anonymous. Defendants provided Jenkins with a document that shows the opinions of some Liberty Counsel personnel on the general subject, and redacted the privileged advice sought and received by a client from his or her lawyers. (*Id.*) Jenkins' challenge is groundless.

In sum, Defendants' massive document production and privilege logs were timely, complete and otherwise proper. Jenkins' demonstrable, willful misrepresentations about that production and Defendants' privilege logs in order to trigger undeserved remedies and draconian sanctions are not just without merit, but sanctionable.

II. JENKINS' SECOND MOTION TO COMPEL IS SANCTIONABLE BECAUSE JENKINS FAILED TO MEET AND CONFER WITH DEFENDANTS PRIOR TO FILING, AND NOW KNOWINGLY MISREPRESENTS THE RECORD TO CREATE A FALSE IMPRESION OF FUTILITY.

A. Jenkins Admits Her Failure to Meet and Confer, But Knowingly and Fraudulently Misrepresents the Record to Manufacture "Futility."

Jenkins admits that she flaunted the Court's requirement of conferring with Defendants prior to filing her Second Motion to Compel. (Reply at 17). She says, however, that conferring with Defendants about her complaints would have been "futile," because "Plaintiffs have engaged in multiple conferences with Defendants about a number of discovery issues," and "[n]one has resolved discovery issues sufficient to avoid the Court's intervention." (Reply at 17-18).

This is an outright, willful fabrication. As already demonstrated by Defendants, in the six weeks before Jenkins filed her Second Motion to Compel, the parties had numerous conferrals about search terms to employ for Defendants' ESI production, which required much back-and-forth, was timely, courteous and collegial, and ultimately resulted in a successful agreement on the search terms, **without Court intervention**. (*See* Defendants' Opposition, dkt. 484 at p.17 ¶ 58; *id.* at 29 (citing conferrals filed at dkts. 472-6, 472-8, 472-9, 472-10, 472-11, and 472-12)).

Further examples of the parties' courteous and timely conferrals to successfully resolve discovery issues without Court intervention abound, and are too many to exhaustively detail here, but Defendants will list just six of them, to demonstrate how outrageous and sanctionable Jenkins' "no success" futility fabrication really is:

1) In the Spring of 2019, Jenkins was insisting that the parties agree to a comprehensive protective order for use in discovery, which Jenkins wanted to include onerous “Highly Confidential” and “Attorney’s Eyes Only” Provisions. (Mihet, Clemons and other counsel communications, attached as **Exhibit 3**). The parties engaged in courteous and successful dialogue, and were ultimately able to agree, **without Court intervention**, that no global protective order would be sought, and no “Highly Confidential” or “Attorney’s Eyes Only” provisions would be sought. (*Id.*)

2) In June 2019, Defendants and Jenkins exchanged prompt and courteous communications while conferring about a privileged document that was produced inadvertently to Jenkins, and were able to agree on the voluntary clawback and destruction of the privileged document **without Court intervention**. (Mihet-Clemons email communications, attached as **Exhibit 4**).

3) In July and August 2019, Jenkins proposed a more specific protective order for use with a particular set of documents. (Clemons, Mihet and other counsel communications, attached as **Exhibit 5**). Defendants’ counsel provided comments and revisions, which were discussed in multiple, courteous conferrals between the parties. (*Id.*) The parties successfully agreed on the contents of the protective order, **without Court intervention**. (*Id.*)

4) Between November 20 and 26, 2019, the parties exchanged numerous conferrals in connection with Jenkins’ unilateral noticing of several depositions on days that other counsel, including Defendants’ counsel, were not available. (Clemons, Mihet and other counsel communications, attached as **Exhibit 6**). Although a little contentious at first, given the unilateral scheduling by Plaintiff (in violation of the rules), the conferrals were courteous and ultimately successful. (*Id.*) Jenkins desisted from her unilateral scheduling of depositions, Defendants’

counsel ended up putting together a comprehensive deposition schedule that included 14 depositions on multiple days, and the parties were able to successfully agree **without having to trouble the Court** over Jenkins' unilateral scheduling attempt. (*Id.*)

5) In mid-December 2019, the parties exchanged timely and courteous emails over the course of two days to schedule several depositions in January 2020. (Mihet-Rajaratnam email communications, attached as **Exhibit 7**).

6) After the Court extended the discovery schedule on January 7, 2020 (dkt. 450), the parties engaged in multiple conferrals, which resulted in voluntary agreement to cancel depositions that were already noticed and scheduled to take place the following week, as well as agreement on discovery matters and deadlines upon which the parties should seek further clarification from the Court, on an unopposed basis. (Soto-Mihet email communications, attached as **Exhibit 8**). Defendants were responsive and courteous throughout. (*Id.*)

Hiding from the Court all of these examples, and others, of collegial and successful collaboration on discovery matters between Jenkins' and Defendants' counsel, Jenkins unfairly charges that "each conference has taken weeks to schedule." (Reply at 17). That is also patently false, as the above email exhibits demonstrate that Defendants were timely, responsive and professional throughout.

Jenkins picks **two** instances from the entire eight-year span of this litigation, both of which happened **months** before her Second Motion to Compel, where the parties took a little bit longer to confer, (Reply at 17-18), but deceptively conceals that there were exigent circumstances, and that Jenkins herself was responsible for the "delay." With respect to the November 10 to November 25, 2019 "delay" of 15 days for a conferral, Defendants have already demonstrated that they were wrapping up a multi-month jury trial on November 15, that they timely communicated with

Jenkins' counsel during this period, and that they held the meet and confer on November 25, only six business days after the marathon trial was completed. (Defendants' Opp., dkt. 484, p.7, ¶¶ 13-16.) But what makes this example chosen by Jenkins truly fraudulent is that, when Jenkins first wrote Defendants to request a conferral, **Jenkins provided November 25 as one of her preferred dates for the conferral.** (Dkt. 472-2 at 2). Thus, even though Defendants' counsel were coming off a long running jury trial, **they agreed to confer with Jenkins on one of the days that she herself suggested.** (*Id.*) There was no "delay." That Jenkins now uses **this** instance as an example of Defendants' "delay" and "foot dragging" is insulting, dishonest and sanctionable.

Jenkins' second example of so-called "delay" is equally fraudulent. Jenkins complains that a discovery meet and confer that took place initially on February 11, 2019 was not able to be completed until April 12, 2019. (Reply at 17). What Jenkins doesn't tell the Court, however, is that after the February 11 conferral, **Jenkins** took a full **six weeks** to attempt to schedule a follow up. (Clemons-Mihet email communications, March 21, 2019, attached at Exhibit 9, p. 5). When Jenkins made that belated attempt, Defendants' counsel were in a two-month, daily deposition marathon (for the jury trial case), but they were **still** able to agree with Jenkins on a follow-up conferral date that was only 12 days later than Jenkins had requested. (*Id.* at 1-4). Jenkins' attempt to now blame Defendants for the eight-week delay between the two conferrals, **when Jenkins herself took six of those weeks to ever seek the follow-up,** is dishonest, fraudulent and sanctionable.

Finally, Jenkins complains that, after she filed her ill-advised and demonstrably deficient Second Motion to Compel, without conferring with Defendants about any privilege issues, Defendants "refused" to meet and confer with her. (Reply at 18). This "shoot first and find out later" approach is not how the conferral process is supposed to work. *Naviant Mktg. Sols., Inc. v.*

Larry Tucker, Inc., 339 F.3d 180, 186 (3d Cir. 2003). Having admittedly failed to confer with Defendants prior to filing her improper Second Motion to Compel, it was incumbent upon Jenkins to withdraw the motion and engage in the conferral process in good faith. Defendants were reasonable and justified in declining to “confer” with Jenkins with the threat of sanctions from an improper motion hanging over their heads. If the Court were to condone or reward this “shoot first and find out later” approach, other litigants will no doubt follow Jenkins’ lead.

Finally, as the icing on the cake, Jenkins argues that Defendants’ good faith belief that their privilege logs are sufficient somehow demonstrates that a conferral would have been futile. (Reply at 18). This is astounding. If one party’s good faith disagreement with another were sufficient to flout the conferral rules, then the rules would have no meaning. The whole point of a conferral is for the parties to attempt to reach common ground **despite** their differences, or at least to narrow the issues. Jenkins’ steadfast refusal to follow the rules is inexcusable and sanctionable.

B. Jenkins’ Second Motion to Compel is Sanctionable Because Jenkins Now Raises Even More Issues That She Has Never Raised With Defendants.

As shown throughout this Reply, in addition to the privilege issues she raised for the first time in her Second Motion to Compel, Jenkins Reply itself doubles down and compounds her flouting of the rules, by raising yet more issues for the first time (in a Reply, no less) that she never attempted to discuss or resolve with Defendants. Among these issues are Jenkins’ complaint that Defendants need to produce a privilege log for two redacted documents (to supplement the information readily available from the redacted documents themselves). Another brand new, unaired issue is Jenkins’ complaint that Defendants’ production is too massive, because Defendants supposedly should have de-duplicated identical documents from different custodians and should have withheld certain documents, even if they contain search terms provided by Jenkins.

It is painfully clear that, unless this Court rejects Jenkins' attempts to skip the conferral process, and imposes a sufficient sanction, Jenkins will not desist.

III. THE COURT SHOULD IMPOSE A SANCTION AGAINST JENKINS AND HER COUNSEL EQUAL TO THE VALUE OF ATTORNEY TIME THAT THEIR KNOWING MISREPRESENTATIONS HAVE CAUSED DEFENDANTS TO EXPEND.

In addition to the time that Defendants' counsel were required to expend in the initial Opposition to Plaintiff's groundless and deceptive Second Motion to Compel (which, at prevailing hourly rates is valued at \$10,650 (dkt. 484, pp.24-25), Defendants' counsel were required to expend additional time to research and prepare this Reply, to bring to the Court's attention Jenkins' even more improper and egregious misrepresentations therein. Specifically, Attorney Daniel Schmid expended in excess of 5.50 hours, and Attorney Horatio Mihet expended 14.20 hours. At the same hourly rates demonstrated to be reasonable in Defendants' Opposition (*i.e.*, \$300 for Attorney Schmid and \$550 for Attorney Mihet) (*id.*), this additional time is reasonably valued at \$9,460. The total amount of work that Defendants' counsel were required to expend to respond and defend against Jenkins' groundless Second Motion to Compel is therefore valued at \$20,110.

Jenkins has now demonstrated that neither she, nor her counsel, will cease from playing deceptive discovery games unless the Court enters an appropriate sanction. Merely denying Jenkins' Second Motion to Compel would be unjust, in light of how deceptive and fraudulent it is, and how much time Defendants were forced to divert from their work to respond. The Court should award a sanction of \$20,110 to make Defendants whole.

CONCLUSION

For the foregoing reasons, and those detailed in Defendants' Opposition and Cross Motion for Sanctions, Plaintiff's Second Motion to Compel should be denied in its entirety, and the Court should impose a sanction of \$20,110 against Jenkins and her counsel, for filing an unnecessary

and misleading motion, without first engaging in the required meet-and-confer as to the majority of issues raised, and for refusing to withdraw said motion even after it became moot.

Respectfully submitted,

Anthony R. Duprey
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Phone: (802) 388-7966
Facsimile: (802) 388-9713
Email: anthony@ndp-law.com

/s/ Horatio G. Mihet
Horatio G. Mihet*
Roger K. Gannam*
Daniel J. Schmid*
LIBERTY COUNSEL
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Phone: (407) 875-1776
Facsimile: (407) 875-0770
Email: hmihet@lc.org

*Attorneys for Defendants Liberty Counsel, Inc.
And Rena M. Lindevaldsen*

*Admitted pro hac vice

VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that the factual assertions in the foregoing document regarding the course of discovery and the amount of work Defendants' counsel were required to expend on this Reply are true and correct.

Executed on May 8, 2020

/s/ Horatio G. Mihet
Horatio G. Mihet

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2020, I caused a true and correct copy of the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notice system.

/s/ Horatio G. Mihet
Horatio G. Mihet

From: [Diego Soto](#)
To: [Brooks McArthur](#); [Anthony Duprey](#); [Daniel Schmid](#); [Horatio Mihet](#); [Roger Gannam](#); [Adam Hochschild](#); [Norman Smith](#); [Richard Boyer](#); [Toddy Ferguson](#); [Michael Tierney](#)
Cc: [Beth Littrell](#); [Claudia Huerta](#); [Diego Soto](#); [Emily Joselson](#); [flangrock](#); [Jessica Stone](#); [jswift](#); [Julie Jackman](#); [Maya Rajaratnam](#); [Sarah Star](#); [Scott McCoy](#); [srs](#); [Tyler Clemons](#)
Subject: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiff Janet Jenkins's Production of JENKINS17036-JENKINS20499
Date: Friday, March 20, 2020 6:37:00 PM
Attachments: [04:10 PROTECTIVE ORDER re- Plaintiffs Medical Mental Health Financial and Other Personal Records and I.pdf](#)

Counsel,

Please find at the link below Plaintiff Janet Jenkins's production of documents Bates stamped JENKINS17036-JENKINS20499:

<https://splc.box.com/s/3h7mz1ocmzrpb0c0qtd2k7nh813i9b1>

The following is a shortened URL for your convenience: <https://bit.ly/2xeZaJW>

This production contains documents responsive to the RUL Defendants' Requests 1, 3-4, and 16-18, Wall's Requests 1, 15-16, 18, 26, 31, 61, and 66-67, and Liberty Counsel's Requests 1, 4, 9-11, 30, 53-54, and 58.

This production contains 3 confidential documents protected from disclosure by court order. A copy of that order is attached for your convenience.

Sincerely,
Diego



Diego Soto he/him/his
Staff Attorney | LGBTQ Rights & Special Litigation
Southern Poverty Law Center
T 334.956.8427 C 334.604.1414 F 334.956.8481
diego.soto@splcenter.org | www.splcenter.org
Admitted in Alabama and the District of Columbia

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EXHIBIT 1

From: [Diego Soto](#)
To: [Brooks McArthur](#); [Anthony Duprey](#); [Daniel Schmid](#); [Horatio Mihet](#); [Roger Gannam](#); [Adam Hochschild](#); [Norman Smith](#); [Richard Boyer](#); [Toddy Ferguson](#); [Michael Tierney](#)
Cc: [Beth Littrell](#); [Claudia Huerta](#); [Diego Soto](#); [Emily Joselson](#); [flangrock](#); [Jessica Stone](#); [Maya Rajaratnam](#); [Sarah Star](#); [Scott McCoy](#); [Tyler Clemons](#)
Subject: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiff Janet Jenkins's Production of JENKINS20500-JENKINS22069
Date: Friday, April 10, 2020 1:40:50 PM

Counsel,

Please find at the link below Plaintiff Janet Jenkins's production of documents Bates stamped JENKINS20500-JENKINS22069:

<https://splc.box.com/s/t06ykb95tc2j8cnhvavfug81a02t26ah>

The following is a shortened URL for your convenience: <https://bit.ly/2XrSJ1s>

To add a layer of security to Plaintiffs' productions, Plaintiffs have added a password requirement to this and all past productions. The password is the date this case was filed: August142012

This production contains documents responsive to the RUL Defendants' Request 16, Wall's Requests 16, 24, 26, 31-32, 37-38, 54, 64-65, and 67, and Liberty Counsel's Requests 9-11, 29, and 58.

This production also contains 32 nonconfidential documents with limited information redacted: full names of nonparty minors, the month and day of a nonparty minor's birth, the first five digits of Plaintiff Isabella Miller-Jenkins's Social Security number, and the personal phone numbers of Plaintiff Janet Jenkins, Jenkins's mother, and Jenkins's attorney Sarah Star. Plaintiffs are willing to provide this redacted information to Defendants upon request.

Sincerely,
Diego



Diego Soto he/him/his
Staff Attorney | LGBTQ Rights & Special Litigation
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diego.soto@splcenter.org | www.splcenter.org
Admitted in Alabama and the District of Columbia

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EXHIBIT 2

Horatio Mihet

From: Horatio Mihet
Sent: Friday, July 12, 2019 1:58 PM
To: Tyler Clemons; Norman Smith; Robert B. Hemley; Brooks G. McArthur (bmcarthur@jarvismcarthur.com); Norman C. Smith (nc.smith@myfairpoint.net); Norman C. Williams; Daniel Schmid; Roger Gannam; Anthony R. Duprey (anthony@ndp-law.com); mtierney@wadleighlaw.com
Cc: Diego Soto; Sarah Star; flangrock; Hillary A. Borcharding; Matthew B. Byrne; Emily Joselson
Subject: RE: Jenkins v Miller: Stipulated Protective Order

Tyler and Diego,

It was good to speak with you this afternoon about Plaintiff's push for a Protective Order.

I am confirming our discussion, wherein you indicated that you did not have any document in mind for marking as "Highly Confidential" or "Attorney's Eyes Only." I and other defendants indicated that it is inappropriate to consider such an onerous litigation handicap without any need for it. I asked that this be removed from our future discussions.

Also on our call, you indicated that, as of now, your client Ms. Jenkins has not provided you with any documents that you are withholding until the entry of a protective order, and that you are ready to produce but for the absence of a protective order. You indicated that there are only two categories of documents that you anticipate receiving from your client that might need to be designated as "Confidential" under a protective order – mental health records and business records of a day care. I and other defendants requested that you obtain from your client the universe of documents responsive to pending discovery requests, and that you determine the nature and amount of specific documents that you believe require a protective order for our next discussion.

Finally, also on our call, you estimated that CAM has produced around 200 pages of documents, of which about 10% are marked as "Confidential," and none as "Highly Confidential." SPLC is withholding these latter documents pending entry of a protective Order. But, SPLC is willing to produce immediately the remainder of CAM documents that are not marked as "Confidential." Please do so, ASAP. And, as discussed, please confirm or correct these numbers. If we're dealing with a limited and specific subset of documents, my clients would be willing to stipulate to a limited Order addressing them.

Please let me know if you think I am not accurately recalling any aspect of our discussion.

Kind Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

PO Box 540774
Orlando, FL 32854
(407) 875-1776 phone
(407) 875-0770 fax

LC.org

Offices in DC, FL, and VA

*Licensed in Florida and Ohio

EXHIBIT 3

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>

Sent: Thursday, July 11, 2019 12:36 PM

To: Norman Smith <norman@normansmithlaw.com>; Horatio Mihet <hmihet@lc.org>; Robert B. Hemley <rhemley@gravelshea.com>; Brooks G. McArthur (bmcArthur@jarvisMcArthur.com) <bmcArthur@jarvisMcArthur.com>; Norman C. Smith (nc.smith@myfairpoint.net) <nc.smith@myfairpoint.net>; Norman C. Williams <nwilliams@gravelshea.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Anthony R. Duprey (anthony@ndp-law.com) <anthony@ndp-law.com>; mtierney@wadleighlaw.com

Cc: Diego Soto <Diego.Soto@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; flangrock <flangrock@langrock.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew B. Byrne <mbyrne@gravelshea.com>; Emily Joselson <ejoselson@langrock.com>

Subject: RE: Jenkins v Miller: Stipulated Protective Order

Counsel:

Please use the information below to dial in to our conference scheduled for tomorrow, Friday, July 12, at 1:15 p.m. Eastern. I look forward to speaking with you then.

(888)450-5996 (Passcode: 397771)



J. Tyler Clemons *they/them/mx*
Staff Attorney | LGBTQ Rights & Special Litigation
Southern Poverty Law Center
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tyler.clemons@splcenter.org | www.splcenter.org
Admitted in Louisiana & Maryland

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From: Tyler Clemons

Sent: Wednesday, July 10, 2019 10:00 AM

To: 'Norman Smith'; Horatio Mihet; Robert B. Hemley; Brooks G. McArthur (bmcArthur@jarvisMcArthur.com); Norman C. Smith (nc.smith@myfairpoint.net); Norman C. Williams; Daniel Schmid; Roger Gannam; Anthony R. Duprey (anthony@ndp-law.com); mtierney@wadleighlaw.com

Cc: Diego Soto; Sarah Star; flangrock; Hillary A. Borcharding; Matthew B. Byrne

Subject: RE: Jenkins v Miller: Stipulated Protective Order

Thanks for your responses. Because several of us are available Friday (7/12) at 12:15 Eastern, we will proceed with the meet and confer. Please hold that time on your calendars and a dial-in number will be sent shortly.



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Admitted in Louisiana & Maryland

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From: Norman Smith [<mailto:norman@normansmithlaw.com>]
Sent: Tuesday, July 9, 2019 2:43 PM
To: Horatio Mihet; Tyler Clemons; Robert B. Hemley; Brooks G. McArthur (bmcarthur@jarvismcarthur.com); Norman C. Smith (nc.smith@myfairpoint.net); Norman C. Williams; Daniel Schmid; Roger Gannam; Anthony R. Duprey (anthony@ndp-law.com); mtierney@wadleighlaw.com
Cc: Diego Soto; Sarah Star; flangrock; Hillary A. Borcharding; Matthew B. Byrne
Subject: RE: Jenkins v Miller: Stipulated Protective Order

I am available.

Norm

Please note that my email address has changed to norman@normansmithlaw.com.

Norman C. Smith, Esq.
76 Lincoln Street
P.O. Box 24
Essex Junction, VT 05453
802-288-9088
802-879-9640 (fax)
norman@normansmithlaw.com

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From: Horatio Mihet <hmihet@lc.org>
Sent: Tuesday, July 9, 2019 3:39 PM
To: Tyler Clemons <Tyler.Clemons@splcenter.org>; Robert B. Hemley <rhemley@gravelshea.com>; Brooks G. McArthur (bmcarthur@jarvismcarthur.com) <bmcarthur@jarvismcarthur.com>; Norman C. Smith (nc.smith@myfairpoint.net) <nc.smith@myfairpoint.net>; Norman C. Williams <nwilliams@gravelshea.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Anthony R. Duprey (anthony@ndp-law.com) <anthony@ndp-law.com>; mtierney@wadleighlaw.com
Cc: Diego Soto <Diego.Soto@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; flangrock <flangrock@langrock.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew B. Byrne <mbyrne@gravelshea.com>
Subject: RE: Jenkins v Miller: Stipulated Protective Order

I am available.

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*
Liberty Counsel

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>

Sent: Tuesday, July 9, 2019 1:16 PM

To: Robert B. Hemley <rhemley@gravelshea.com>; Horatio Mihet <hmihet@lc.org>; Brooks G. McArthur (bmcarthur@jarvismcarthur.com) <bmcarthur@jarvismcarthur.com>; Norman C. Smith (nc.smith@myfairpoint.net) <nc.smith@myfairpoint.net>; Norman C. Williams <nwilliams@gravelshea.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Anthony R. Duprey (anthony@ndp-law.com) <anthony@ndp-law.com>; mtierney@wadleighlaw.com

Cc: Diego Soto <Diego.Soto@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; flangrock <flangrock@langrock.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew B. Byrne <mbyrne@gravelshea.com>

Subject: RE: Jenkins v Miller: Stipulated Protective Order

Counsel:

Brooks has proposed 1:15 p.m. Eastern on this Friday, July 12, for our meet & confer regarding the protective order. Are others able to dial in at this time? Please let us know as soon as possible.

Best,

Tyler



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Admitted in Louisiana & Maryland

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From: Tyler Clemons

Sent: Wednesday, July 3, 2019 12:52 PM

To: 'Robert B. Hemley'; Horatio Mihet; Brooks G. McArthur (bmcarthur@jarvismcarthur.com); Norman C. Smith (nc.smith@myfairpoint.net); Norman C. Williams; Daniel Schmid; Roger Gannam; Anthony R. Duprey (anthony@ndp-law.com); mtierney@wadleighlaw.com

Cc: Beth Jacob; Diego Soto; Sarah Star; flangrock; Hillary A. Borcharding; Matthew B. Byrne

Subject: RE: Jenkins v Miller: Stipulated Protective Order

Thank you, Bob.

Counsel for remaining defendants: Please send me your availability for a meet and confer during the weeks of July 8 and July 15. Pursuant to Local Rule 26(c), Plaintiffs must meet and confer with the remaining counsel before filing a motion for the Court to enter the proposed discovery order. (Although we have already conferred with counsel for the RUL Defendants regarding the order, Plaintiffs do not object to their attendance as well.)

Thanks and Happy 4th,

Tyler



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From: Robert B. Hemley [<mailto:rhemley@gravelshea.com>]
Sent: Monday, July 1, 2019 3:33 PM
To: Tyler Clemons; Horatio Mihet; Brooks G. McArthur (bmcarthur@jarvismcarthur.com); Norman C. Smith (nc.smith@myfairpoint.net); Norman C. Williams; Daniel Schmid; Roger Gannam; Anthony R. Duprey (anthony@ndp-law.com); mtierney@wadleighlaw.com
Cc: Beth Jacob; Diego Soto; Sarah Star; flangrock; Hillary A. Borcharding; Matthew B. Byrne
Subject: Re: Jenkins v Miller: Stipulated Protective Order

Tyler: You have the RUL Defendants' position on this, about which we have already met and conferred, and have also made reference to in our motion to compel. I believe you also have the opposition of the Liberty Defendants, who indicated that they adopt the position of the RUL Defendants. If there is something more you are looking for from the RUL Defendants as to their position, let me know. I understand that you have made no changes in what you now propose from your earlier proposal, so our position remains the same. Thank you.

Robert B. Hemley | *Shareholder*
Gravel & Shea PC
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802-658-0220 (phone) | 802-658-1456 (fax) | 802-233-1437 (cell)
rhemley@gravelshea.com | www.gravelshea.com
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From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Thursday, June 27, 2019 2:38 PM
To: Horatio Mihet; Brooks G. McArthur (bmcarthur@jarvismcarthur.com); Norman C. Smith (nc.smith@myfairpoint.net); Norman C. Williams; Daniel Schmid; Roger Gannam; Anthony R. Duprey (anthony@ndp-law.com); mtierney@wadleighlaw.com
Cc: Beth Jacob; Diego Soto; Sarah Star; flangrock; Robert B. Hemley; Hillary A. Borcharding; Matthew B. Byrne
Subject: RE: Jenkins v Miller: Stipulated Protective Order

Good afternoon counsel:

I have reattached Plaintiffs' proposed stipulated protective order governing the use of confidential and highly confidential information in *Jenkins v. Miller*, No. 2:12-cv-184-wks (D. Vt.). Recent discovery requests served on Plaintiffs by Defendants RUL, Zodiates, and Hyden include requests for mental health records and financial documents; these requests underscore the need for a standardized method of designating and controlling the dissemination of private information in this case.

The RUL Defendants have made clear that they oppose the entry of this protective order, but the remaining Defendants have not done so. Please apprise Plaintiffs of your clients' position regarding the entry of this protective order at your earliest convenience.

Best,

J. Tyler Clemons (*they/them/mx*)
Staff Attorney, LGBTQ Rights/Special Litigation
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Admitted to practice in Louisiana and Maryland.

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From: Horatio Mihet [<mailto:hmihet@lc.org>]
Sent: Friday, April 26, 2019 1:44 PM
To: Robert B. Hemley; Tyler Clemons; Brooks G. McArthur (bmcarthur@jarvismcarthur.com); Matthew B. Byrne; Norman C. Smith (nc.smith@myfairpoint.net); Hillary A. Borcharding; Norman C. Williams; Daniel Schmid; Roger Gannam; Anthony R. Duprey (anthony@ndp-law.com); mtierney@wadleighlaw.com; dboyd@gravelsthea.com
Cc: Beth Jacob; Diego Soto; Sarah Star; flangrock
Subject: RE: Jenkins v Miller: Stipulated Protective Order

I share these concerns. Perhaps Plaintiffs can provide a few examples of documents they believe would require the protections of a protective order.

At a minimum, the presumption should remain in favor of open records/proceedings, with the burden of justifying confidentiality designations, and of moving to retain them after a dispute arises, squarely placed on the party claiming confidentiality.

We can discuss these provisions in greater detail after Plaintiffs demonstrate a real need for a protective order, with concrete examples. Thanks.

HGM

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*
Liberty Counsel

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*Licensed in Florida and Ohio

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From: Robert B. Hemley <rhemley@gravelshea.com>
Sent: Thursday, April 25, 2019 4:52 PM
To: 'Tyler Clemons' <Tyler.Clemons@splcenter.org>; Brooks G. McArthur (bmcarthur@jarvismcarthur.com) <bmcarthur@jarvismcarthur.com>; Matthew B. Byrne <mbyrne@gravelshea.com>; Norman C. Smith (nc.smith@myfairpoint.net) <nc.smith@myfairpoint.net>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Norman C. Williams <nwilliams@gravelshea.com>; Horatio Mihet <hmihet@lc.org>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Anthony R. Duprey (anthony@ndp-law.com) <anthony@ndp-law.com>; mtierney@wadleighlaw.com; dboyd@gravelshea.com
Cc: Beth Jacob <beth.jacob@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; flangrock <flangrock@langrock.com>
Subject: RE: Jenkins v Miller: Stipulated Protective Order

Tyler: I question why we need a protective order in this case. It seems to me that just about everything, if not everything, that is the subject of valid discovery is already public after two criminal trials, and substantial production by my clients in this case without the benefit of a protective order. I fear that a protective order such as you have proposed will lead, as they almost always do, to over designation, and create unnecessary obstacles to the exchange of discoverable information. I think I would prefer to deal with confidentiality issues that may arise on a document by document (or class of document) basis. I don't know if others of the defense counsel have different views, or if they have responded to your e-mail. If so, I would be interested in hearing what they have to say. Feel free to call if you have any questions.

Also, I note that David Boyd is still listed as counsel. David no longer works at Gravel & Shea, so he should be taken off the list. Thanks.

Robert B. Hemley | Shareholder
Gravel & Shea PC
76 St. Paul Street, 7th Floor | P. O. Box 369 | Burlington, VT 05402-0369
802-658-0220 (phone) | 802-658-1456 (fax) | 802-233-1437 (cell)
rhemley@gravelshea.com | www.gravelshea.com
[Biography](#) | [Download vCard](#)

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Wednesday, April 10, 2019 10:55 AM
To: Brooks G. McArthur (bmcarthur@jarvismcarthur.com) <bmcarthur@jarvismcarthur.com>; Robert B. Hemley <rhemley@gravelshea.com>; Matthew B. Byrne <mbyrne@gravelshea.com>; Norman C. Smith (nc.smith@myfairpoint.net) <nc.smith@myfairpoint.net>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Norman C. Williams <nwilliams@gravelshea.com>; Horatio Mihet <hmihet@lc.org>; Daniel J. Schmid (dschmid@lc.org) <dschmid@lc.org>; Roger Gannam <rgannam@lc.org>; Anthony R. Duprey (anthony@ndp-law.com) <anthony@ndp-law.com>; mtierney@wadleighlaw.com; dboyd@gravelshea.com
Cc: Beth Jacob <beth.jacob@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Sarah Star

<sarahstar.esq@gmail.com>; flangrock <flangrock@langrock.com>

Subject: Jenkins v Miller: Stipulated Protective Order

Counsel:

I have attached a proposed stipulated protective order governing the use of confidential and highly confidential information in *Jenkins v. Miller*, No. 2:12-cv-184-wks (D. Vt.). Please send any comments or proposed edits at your earliest convenience.

Best,

J. Tyler Clemons (*he/him/his*)

Staff Attorney, LGBT Rights/Special Litigation

[Southern Poverty Law Center](#)

201 St. Charles Avenue Suite 2000

New Orleans, Louisiana 70170

t (504)526-1530 c (504)258-4290 f (504)486-8947

[LinkedIn](#) | [SSRN](#)

Admitted to practice in Louisiana and Maryland.

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Horatio Mihet

From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Thursday, June 20, 2019 10:27 AM
To: Horatio Mihet
Cc: Beth Jacob; David Dinielli; Diego Soto; flangrock; srs; Brooks G. McArthur; mtierney@wadleighlaw.com; Robert B. Hemley; Norman C Smith; wfowler@williamsmullen.com; hjohnson@williamsmullen.com; jfeinman@williamsmullen.com; Daniel Schmid; Roger Gannam; flangrock
Subject: RE: Jenkins v. Miller et al - LC, Staver and Lindevaldsen privilege log and claw back request for LU Documents

Good morning Harry,

We have searched our files and deleted document #88 (UNIV-00336 – UNIV-00339). We have also searched our email files and found a couple of instances in which the document was sent as an attachment to internal SPLC recipients. We have deleted each of those emails. We did want to let you know, however, that because of the way our automatic backup system works, the file will not be fully deleted from all of our systems for approximately 45 days. We hereby affirm that we will not retrieve any of the deleted files from our backup system. We further affirm that we have not used or disclosed, and will not use or disclose, the document until your privilege claim is resolved.

J. Tyler Clemons (*they/them/mx*)
Staff Attorney, LGBTQ Rights/Special Litigation
[Southern Poverty Law Center](#)
201 St. Charles Avenue Suite 2000
New Orleans, Louisiana 70170
t (504)526-1530 c (504)258-4290 f (504)486-8947
[LinkedIn](#) | [SSRN](#)

Admitted to practice in Louisiana and Maryland.

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From: Horatio Mihet [mailto:hmihet@lc.org]
Sent: Tuesday, June 18, 2019 2:15 PM
To: Tyler Clemons
Cc: Beth Jacob; David Dinielli; Diego Soto; flangrock; srs; Brooks G. McArthur; mtierney@wadleighlaw.com; Robert B. Hemley; Norman C Smith; wfowler@williamsmullen.com; hjohnson@williamsmullen.com; jfeinman@williamsmullen.com; Daniel Schmid; Roger Gannam
Subject: Jenkins v. Miller et al - LC, Staver and Lindevaldsen privilege log and claw back request for LU Documents
Importance: High

Tyler,

My clients—Liberty Counsel, Rena Lindevaldsen and Mat Staver—are asserting various privileges over a subset of the documents identified by Liberty University as potentially responsive to Jenkins' subpoena. Please find attached a privilege log.

We have asked Liberty University not to produce the first 82 out of the 88 documents on the privilege log.

We have asked Liberty University to produce documents ## 83-87, but with limited redactions, as identified on the privilege log.

Finally, the last document on the log (# 88) was recently produced by Liberty University under Bates labels UNIV-00336 – UNIV-00339. This document is privileged work product, and we are advised that it was produced inadvertently. Consistent with the law of inadvertent disclosure, we hereby request that Plaintiff destroy all copies of this document in her custody, possession or control (including without limitation her counsel’s custody, possession or control) and that you please **confirm on or before close of business on this Friday, June 21:**

1. that all copies of this document have been destroyed and no copies remain in Plaintiff’s custody, possession or control (including without limitation her counsel’s custody, possession or control);
2. either that Plaintiff did not disclosed this document to any other party prior to receiving this notification, or, if disclosure has already been made, please let us know the person(s) to whom it was disclosed, the date of disclosure and the efforts Plaintiff has made or is making to retrieve the document; and
3. that Plaintiff has not used the information in the privileged document, and has no intention of using it or disclosing it, until such time that this privilege claim, if ever challenged, is resolved.

See Fed. R. Civ. P. 26(b)(5)(B). *See also, Fuller v. Interview, Inc.*, No. 07CIV.5728RJSDF, 2009 WL 3241542, at *2, *& (S.D.N.Y. Sept. 30, 2009) (holding that receiving party who failed to provide the requested certification of destruction of inadvertently produced privileged documents “violated Fed.R.Civ.P. 26(b)(5)(B),” and “directing Plaintiff’s counsel to destroy all copies of them that are within his possession or control”); *id.* at *8 (“the Court has determined that Plaintiff may not use or rely on these [inadvertently disclosed privileged] communications for any purpose in this litigation”); *Bretillot v. Burrow*, No. 14CV7633 JGK MHD, 2015 WL 5306224, at *29 (S.D.N.Y. June 30, 2015), *report and recommendation adopted*, No. 14 CIV. 7633 JGK MHD, 2015 WL 6455155 (S.D.N.Y. Oct. 26, 2015) (same).

Thank you for your prompt attention to this matter.

Kind Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

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Horatio Mihet

From: Horatio Mihet
Sent: Monday, August 19, 2019 11:34 AM
To: Tyler Clemons; Brooks G. McArthur; Robert B. Hemley; 'Norman Smith'
Cc: Norman C. Williams; Daniel Schmid; Roger Gannam; mtierney@wadleighlaw.com; Diego Soto; flangrock; Hillary A. Borcharding; Matthew B. Byrne; Emily Joselson; David Dinielli; srs; Adam Hochschild
Subject: RE: Jenkins: CAM Production

Tyler – if the 3 changes you mentioned in this email chain are the only changes made to the document (I haven't had a chance to confirm), then Liberty Counsel and Lindevaldsen are also in agreement as to this protective order only, reserving all rights and arguments as to any other discovery issues.

HGM

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Thursday, August 15, 2019 11:07 AM
To: Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; Robert B. Hemley <rhemley@gravelshea.com>; 'Norman Smith' <norman@normansmithlaw.com>; Horatio Mihet <hmihet@lc.org>
Cc: Norman C. Williams <nwilliams@gravelshea.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; mtierney@wadleighlaw.com; Diego Soto <Diego.Soto@splcenter.org>; flangrock <flangrock@langrock.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew B. Byrne <mbyrne@gravelshea.com>; Emily Joselson <ejoselson@langrock.com>; David Dinielli <David.Dinielli@splcenter.org>; srs <srs@sarahstarlaw.com>; Adam Hochschild <adam@hochschildlaw.com>
Subject: RE: Jenkins: CAM Production

Thanks Brooks, Bob, and Norm. The attached draft reflects all proposed edits to date.

To be clear, my understanding is that Plaintiffs, Ken Miller, the RUL Defendants, and Linda Wall are in agreement with filing this version of the protective order. Counsel for those defendants, please let me know if I'm in error.

I still need to hear from the Liberty Counsel defendants and Timothy Miller. Harry and Matthew, please let me know whether your clients agree as well.

Best,

Tyler



J. Tyler Clemons they/them/mx
Staff Attorney | LGBTQ Rights & Special Litigation
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From: Brooks G. McArthur [<mailto:bmcarthur@jarvismcarthur.com>]

Sent: Thursday, August 15, 2019 9:37 AM

To: Robert B. Hemley; 'Norman Smith'; Tyler Clemons; Horatio Mihet

Cc: Norman C. Smith (nc.smith@myfairpoint.net); Norman C. Williams; Daniel Schmid; Roger Gannam; mtierney@wadleighlaw.com; Diego Soto; flangrock; Hillary A. Borcharding; Matthew B. Byrne; Emily Joselson; David Dinielli; srs; Adam Hochschild

Subject: Re: Jenkins: CAM Production

I am in agreement.

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From: Robert B. Hemley <rhemley@gravelshea.com>

Sent: Thursday, August 15, 2019 10:28 AM

To: 'Norman Smith'; Tyler Clemons; Horatio Mihet

Cc: Norman C. Smith (nc.smith@myfairpoint.net); Brooks G. McArthur; Norman C. Williams; Daniel Schmid; Roger Gannam; mtierney@wadleighlaw.com; Diego Soto; flangrock; Hillary A. Borcharding; Matthew B. Byrne; Emily Joselson; David Dinielli; srs; Adam Hochschild

Subject: RE: Jenkins: CAM Production

Zodhiates, Hyden and RUL are okay with the proposed CAM protective order with the understanding that this does not affect their position as to other discovery issues.

Robert B. Hemley | *Shareholder*
Gravel & Shea PC

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From: Norman Smith <norman@normansmithlaw.com>

Sent: Wednesday, August 14, 2019 12:21 PM

To: Tyler Clemons <Tyler.Clemons@splcenter.org>; Horatio Mihet <hmihet@lc.org>

Cc: Norman C. Smith (nc.smith@myfairpoint.net) <nc.smith@myfairpoint.net>; Robert B. Hemley

<rhemley@gravelshea.com>; Brooks G. McArthur (bmcarthur@jarvismcarthur.com) <bmcarthur@jarvismcarthur.com>;

Norman C. Williams <nwilliams@gravelshea.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; mtierney@wadleighlaw.com; Diego Soto <Diego.Soto@splcenter.org>; flangrock <flangrock@langrock.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew B. Byrne <mbyrne@gravelshea.com>; Emily Joselson <ejoselson@langrock.com>; David Dinielli <David.Dinielli@splcenter.org>; srs <srs@sarahstarlaw.com>; Adam Hochschild <adam@hochschildlaw.com>

Subject: RE: Jenkins: CAM Production

Thank you, Tyler.

As an initial matter, please include my co-counsel, Adam Hochschild, on all group correspondence going forward. I've included him here.

Adam and I are fine with your proposed edits, Tyler, and we request two additional edits:

- Add a "So Ordered" line for the judge.
- Add a signature block for Adam, under mine, as counsel for Ms. Wall:

Norm

Please note that my email address has changed to norman@normansmithlaw.com.

Norman C. Smith, Esq.

76 Lincoln Street

P.O. Box 24

Essex Junction, VT 05453

802-288-9088

802-879-9640 (fax)

norman@normansmithlaw.com

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>

Sent: Monday, August 12, 2019 11:48 AM

To: Horatio Mihet <hmihet@lc.org>

Cc: Norman C. Smith (nc.smith@myfairpoint.net) <nc.smith@myfairpoint.net>; Robert B. Hemley <rbhemley@gravelshea.com>; Brooks G. McArthur (bmcarthur@jarvismcarthur.com) <bmcarthur@jarvismcarthur.com>; Norman C. Williams <nwilliams@gravelshea.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; mtierney@wadleighlaw.com; Diego Soto <Diego.Soto@splcenter.org>; flangrock <flangrock@langrock.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew B. Byrne <mbyrne@gravelshea.com>; Emily Joselson <ejoselson@langrock.com>; David Dinielli <David.Dinielli@splcenter.org>; srs <srs@sarahstarlaw.com>

Subject: RE: Jenkins: CAM Production

Counsel:

I haven't received any responses regarding Plaintiffs' proposed revisions to Harry's revised protective order governing the CAM documents. I have reattached the proposed order and the proposed revisions are below. Please respond affirmatively if you agree to these revisions so that we can get this filed with the Court.

Best,

Tyler



J. Tyler Clemons *they/them/mx*
Staff Attorney | LGBTQ Rights & Special Litigation
Southern Poverty Law Center
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tyler.clemons@splcenter.org | www.splcenter.org
Admitted in Louisiana & Maryland

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From: Tyler Clemons

Sent: Monday, August 5, 2019 2:46 PM

To: 'Horatio Mihet'

Cc: Norman C. Smith (nc.smith@myfairpoint.net); Robert B. Hemley; Brooks G. McArthur (bmcarthur@jarvismcarthur.com); Norman C. Williams; Daniel Schmid; Roger Gannam; mtierney@wadleighlaw.com; Diego Soto; flangrock; Hillary A. Borcharding; Matthew B. Byrne; Emily Joselson; David Dinielli; srs

Subject: RE: Jenkins: CAM Production

Counsel:

Thank you to Harry for circulating this revised protective order to govern the CAM documents. Plaintiffs are amenable to the entry of this order provided that the following changes are made:

1. The time period in paragraph 2 be extended from 14 days to 20 business days for CAM to file a motion for a protective order in the event that a party challenges the confidentiality of these documents;
2. The typo in paragraph 5 be changed to read "all Persons in paragraph 4(c)" instead of "paragraph 3(c)"; and
3. Paragraph 8 be changed to read "counsel for the Parties shall confer among themselves and with counsel for CAM and agree to procedures..."

I ask that counsel for each defendant respond affirmatively if you agree to these revisions so that we can get this filed with the Court.

Best,

Tyler



J. Tyler Clemons *they/them/mx*
Staff Attorney | LGBTQ Rights & Special Litigation
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tyler.clemons@splcenter.org | www.splcenter.org
Admitted in Louisiana & Maryland

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Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

From: Horatio Mihet [<mailto:hmihet@lc.org>]
Sent: Friday, July 19, 2019 7:07 PM
To: Tyler Clemons
Cc: Norman C. Smith (nc.smith@myfairpoint.net); Robert B. Hemley; Brooks G. McArthur (bmcarthur@jarvismcarthur.com); Norman C. Williams; Daniel Schmid; Roger Gannam; mtierney@wadleighlaw.com; Diego Soto; flangrock; Hillary A. Borcharding; Matthew B. Byrne; Emily Joselson; David Dinielli; srs
Subject: RE: Jenkins: CAM Production

Tyler and other Counsel:

First, I was initially omitted from Tyler's email of last Friday (below), providing a link to the non-confidential CAM documents and a revised Stipulated Protective Order. To the extent you all have had any follow-up discussions on that thread, I would not have been included, and I ask that you forward same to me. Please be sure to use this thread instead going forward.

Second, please find attached a more simplified and specific version of a Protective Order that my clients would be willing to sign to receive the Confidential Documents from CAM. Please let me know promptly if everyone is on board, so that we can have access to those documents.

Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*
Liberty Counsel
PO Box 540774
Orlando, FL 32854
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(407) 875-0770 fax
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From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Friday, July 12, 2019 2:56 PM
To: Horatio Mihet <hmihet@lc.org>
Subject: FW: Jenkins: CAM Production

Hi Harry,

You got left off this list somehow. Forwarding to make sure you receive this.

Best,



J. Tyler Clemons they/them/mx
Staff Attorney | LGBTQ Rights & Special Litigation
Southern Poverty Law Center
T 504.526.1530 C 504.258.4290 F 504.486.8947
tyler.clemons@splcenter.org | www.splcenter.org
Admitted in Louisiana & Maryland

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From: Tyler Clemons
Sent: Friday, July 12, 2019 1:43 PM
To: 'Norman C. Smith (nc.smith@myfairpoint.net)'; 'Robert B. Hemley'; 'Brooks G. McArthur (bmcarthur@jarvismcarthur.com)'; 'Norman C. Williams'; 'Daniel Schmid'; 'Roger Gannam'; 'Anthony R. Duprey (anthony@ndp-law.com)'; 'mtierney@wadleighlaw.com'
Cc: Diego Soto; srs; Fritz Langrock (FLangrock@langrock.com); 'Hillary A. Borcharding'; 'Matthew B. Byrne'; Emily Joselson; David Dinielli
Subject: Jenkins: CAM Production

Good afternoon counsel:

Thank you to Harry, Brooks, Norm, and Hillary for joining Plaintiffs for a conference regarding a protective order this afternoon.

As promised during that call, you may find the portion of the 130-page production from Christian Aid Ministries that was not marked confidential at this link: <https://splc.box.com/s/zum6hqxlrpqonwxw99ywgo4bddxtjdtf>. This does not include the documents Bates Stamped CAM0000015-23 or CAM0000027-32 (a total of 14 pages), which were marked confidential.

I have also attached a draft protective order governing the disclosure of the CAM documents marked confidential. It is drafted in a manner to permit additional documents or categories of information to be easily added to it in the future should that become necessary. Please indicate your willingness to stipulate to such an order at your earliest convenience.

Best,



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Admitted in Louisiana & Maryland

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Horatio Mihet

From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Tuesday, November 26, 2019 11:29 AM
To: Horatio Mihet; Robert B. Hemley; Adam Hochschild
Cc: Brooks G. McArthur; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Roger Gannam; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy; Roger Gannam; Daniel Schmid; Anthony Duprey; Michael J. Tierney; Celeste E. Laramie
Subject: Re: Jenkins: Deposition Notices

Good morning Harry,

That's correct: Plaintiffs are amenable to rescheduling the depositions already noticed for December (and the Staver deposition on January 2) and do not intend to notice any additional depositions for December.

I will gather the availability of Janet and Carolyn Jenkins and Plaintiffs' experts for January and February and let you and other defense counsel know as soon as I have it. I ask that defense counsel do the same for their clients. We agree that clustering depositions by geographic area and time is ideal.

Finally, given the Court's admonition in its order yesterday that we should have clarified the discovery deadline sooner, Plaintiffs intend to ask the Court for clarification on the number of depositions that each party is permitted to take. As we discussed yesterday, the proposed scheduling order (ECF 320, paragraph 8) reflected the parties' disagreement over whether Plaintiffs would be allowed to take 10 or 20 non-party witness depositions, and the Court did not resolve that dispute in adopting the schedule at ECF 329. The Court did not mention depositions in the discovery schedule issued yesterday (ECF 425). All counsel: Please let me know by **5 p.m. Eastern on Monday, December 2** whether your clients agree to file this as a joint motion for clarification or whether Plaintiffs should proceed unilaterally.

Best,

Tyler



J. Tyler Clemons *they/them/mx*
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Admitted in Louisiana & Maryland

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From: Horatio Mihet <hmihet@lc.org>
Date: Tuesday, November 26, 2019 at 6:52 AM
To: Tyler Clemons <Tyler.Clemons@splcenter.org>, "Robert B. Hemley" <rhemley@gravelshea.com>, Adam Hochschild <adam@hochschildlaw.com>

Cc: "Brooks G. McArthur" <bmcArthur@jarvismcarthur.com>, "norman@normansmithlaw.com" <norman@normansmithlaw.com>, "cs.fergie@myfairpoint.net" <cs.fergie@myfairpoint.net>, "Hillary A. Borcharding" <hborcharding@gravelshea.com>, "Matthew D. Preedom" <mpreedom@gravelshea.com>, Linda Bradford Barron <lbarron@gravelshea.com>, Claudia Huerta <claudia.huerta@splcenter.org>, David Dinielli <David.Dinielli@splcenter.org>, Diego Soto <Diego.Soto@splcenter.org>, Emily Joselson <ejoselson@langrock.com>, flangrock <flangrock@langrock.com>, Jessica Stone <jessica.stone@splcenter.org>, jswift <jswift@langrock.com>, Julie Jackman <jjackman@langrock.com>, Roger Gannam <rgannam@lc.org>, Sarah Star <sarahstar.esq@gmail.com>, Maya Rajaratnam <maya.rajaratnam@splcenter.org>, Beth Littrell <beth.littrell@splcenter.org>, Scott McCoy <Scott.McCoy@splcenter.org>, Roger Gannam <rgannam@lc.org>, Daniel Schmid <daniel@lc.org>, Anthony Duprey <anthony@ndp-law.com>, "Michael J. Tierney" <mtierney@wadleighlaw.com>, "Celeste E. Laramie" <claramie@gravelshea.com>

Subject: RE: Jenkins: Deposition Notices

Tyler:

With the Court having granted the discovery extension until March 2, let us confirm this morning that the depositions below will not go forward on this schedule, but will be rescheduled in January and February, so that we may complete document discovery first, and also return to our regularly scheduled Holiday Season.

If you'd like, we can begin (re) scheduling discussions promptly, and set deposition dates aside in January and February. We need to endeavor to lump depositions together by geographic area as much as possible, to minimize travel as much as possible.

I know from speaking with Ms. Thurman's counsel yesterday that he would appreciate confirmation this morning that the depositions are being rescheduled, as would I and other defense counsel. Thus, your soonest confirmation is appreciated.

Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel
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From: Horatio Mihet

Sent: Monday, November 25, 2019 3:40 PM

To: Tyler Clemons <Tyler.Clemons@splcenter.org>; Robert B. Hemley <rhemley@gravelshea.com>; Adam Hochschild <adam@hochschildlaw.com>

Cc: Brooks G. McArthur <bmcArthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Linda

Bradford Barron <lbarron@gravelshea.com>; Claudia Huerta <claudia.huerta@splcenter.org>; David Dinielli <David.Dinielli@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; jsswift <jswift@langrock.com>; Julie Jackman <jjackman@langrock.com>; Roger Gannam <rgannam@lc.org>; Sarah Star <sarahstar.esq@gmail.com>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>; Anthony Duprey <anthony@ndp-law.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; Celeste E. Laramie <claramie@gravelshea.com>

Subject: RE: Jenkins: Deposition Notices

Tyler: here is the deposition schedule we discussed and agreed upon this afternoon (perhaps with some follow up needed on the Lindevaldsen deposition):

DATE	TIME	LOCATION	DEPONENT
Dec. 4	9 am	Lynchburg	Joleen Booth
Dec. 4	1 pm	Lynchburg	Debbie Thurman
Dec. 5	9 am	Lynchburg	William Sidebottom
Dec. 5	1 pm	Lynchburg	Sandy Sturgill
Dec. 16	9 am	Vermont	Janet Jenkins
Dec. 16	1 pm	Vermont	Carolyn Jenkins
Dec. 17	9 am	Vermont	Tara Devine
Dec. 18	9 am	Vermont	John Malluccio
Dec. 18	1 pm	Vermont	Sharon Lamb
Dec. 19	10 am	Lynchburg	Victoria Hyden
Dec. 20	9 am	Lynchburg	Linda Wall
TBD	TBD	New Jersey	Patricia Apy
Jan. 2	8 am	Mathew Staver	Orlando
Jan. 2	2 pm	Rena Lindevaldsen	Orlando

Please provide us with Ms. Apy's availability today or tomorrow.

As discussed, if you need the full 7 hours with each of Mr. Staver or Ms. Lindevaldsen, and are not able to conclude their depositions back-to-back on Jan. 2, we will agree to conclude them on the morning of Jan. 3, without affecting or extending any other discovery deadline.

You indicated that you wish to take up to 6 additional depositions (Liberty Counsel, Response Unlimited, Yoder, K. Miller, T. Miller and Zodiates). We disagreed about whether or not the Scheduling Order (dkt. 320) permits Plaintiffs to take more than the 10 depositions allowed by the civil rules. I asked you to identify 2 additional depositions that would fit within the limit of 10, so that we can promptly attempt to schedule those.

I also asked you to provide me with a list of 30(b)(6) topics for Liberty Counsel as soon as possible, and you agreed to provide them no later than this Wednesday.

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
 Chief Litigation Counsel*

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>

Sent: Monday, November 25, 2019 12:26 PM

To: Robert B. Hemley <rhemley@gravelshea.com>; Horatio Mihet <hmihet@lc.org>; Adam Hochschild <adam@hochschildlaw.com>

Cc: Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Claudia Huerta <claudia.huerta@splcenter.org>; David Dinielli <David.Dinielli@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; jswift <jswift@langrock.com>; Julie Jackman <jjackman@langrock.com>; Roger Gannam <rgannam@lc.org>; Sarah Star <sarahstar.esq@gmail.com>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>; Anthony Duprey <anthony@ndp-law.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; Celeste E. Laramie <claramie@gravelshea.com>

Subject: RE: Jenkins: Deposition Notices

Thanks Bob, Harry and Adam: Please let me know Ms. Lindevaldsen and Ms. Wall's alternative availability by the end of the day.



J. Tyler Clemons *they/them/mx*

Staff Attorney | LGBTQ Rights & Special Litigation

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From: Robert B. Hemley [<mailto:rhemley@gravelshea.com>]

Sent: Saturday, November 23, 2019 9:30 AM

To: Tyler Clemons; Horatio Mihet; Adam Hochschild

Cc: Brooks G. McArthur; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Roger Gannam; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy; Roger Gannam; Daniel Schmid; Anthony Duprey; Michael J. Tierney; Celeste E. Laramie

Subject: RE: Jenkins: Deposition Notices

Tyler: I was tied up yesterday with an all day hearing, so am only now able to respond to your e-mails. I will check with Victoria and let you know of her availability during the week of December 23. Her deposition will have to be near her home in Lynchburg.

From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Friday, November 22, 2019 1:05 PM
To: Horatio Mihet <hmihet@lc.org>; Adam Hochschild <adam@hochschildlaw.com>
Cc: Robert B. Hemley <rhemley@gravelshea.com>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Claudia Huerta <claudia.huerta@splcenter.org>; David Dinielli <David.Dinielli@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; jswift <jswift@langrock.com>; Julie Jackman <jjackman@langrock.com>; Roger Gannam <rgannam@lc.org>; Sarah Star <sarahstar.esq@gmail.com>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>; Anthony Duprey <anthony@ndp-law.com>; Michael J. Tierney <mtierney@wadleighlaw.com>
Subject: RE: Jenkins: Deposition Notices

Hi Harry,

The witness availability during the week of December 16 you requested is as follows:

- Janet and Carolyn Jenkins are available any time that week. Please notice their depositions in or around Fair Hope, Vermont.
- Tara Devine is available on Tuesday, December 17. Please notice her deposition in or around Rutland, Vermont.
- Dr. Sharon Lamb is available all day on Wednesday, December 18; from 2 p.m. on Monday, December 16; and before noon and after 2:30 p.m. on Thursday, December 19. Please notice her deposition in or around Shelburne, Vermont.
- Dr. John Maluccio is available any time that week except for Tuesday, December 17, after 3 p.m. Please notice his deposition in or around Middlebury, Vermont.

I am still trying to get Patricia Apy's availability for that week and will pass it along as soon as I have it.

All counsel: Plaintiffs intended to notice the depositions of Rena Lindevaldsen, Victoria Hyden, and Linda Wall for December 16-18, but will refrain from doing so given Liberty Counsel's request to schedule multiple depositions that week. Please provide alternative dates for your client's depositions as soon as possible but by **5 p.m. Eastern on Monday, November 25, 2019**, at the latest. Otherwise we will need to notice these depositions without your input.

Best,



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From: Horatio Mihet [<mailto:hmihet@lc.org>]
Sent: Thursday, November 21, 2019 9:27 AM
To: Adam Hochschild; Tyler Clemons

Cc: Robert B. Hemley; Brooks G. McArthur; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Roger Gannam; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy; Roger Gannam; Daniel Schmid; Anthony Duprey; Michael J. Tierney
Subject: RE: Jenkins: Deposition Notices

Tyler:

First, my clients consent to electronic service.

Second, please refrain from any further unilateral scheduling or noticing of depositions, without coordinating dates and locations with opposing counsel, because that is improper and unprofessional. We have communicated via email on numerous occasions until now, and there was no reason why you could not email or call me to coordinate the depositions you unilaterally noticed.

Third, we are unavailable for depositions in Virginia on Dec. 4-5. We can do December 9-10 or 10-11. Please confirm immediately that you do not intend to proceed with depositions on Dec. 4-5, failing which we will need to seek protection from the Court.

Fourth, please provide dates and locations for the depositions of Janet Jenkins, Carolyn Ceccotti Jenkins, and each of Plaintiff's four purported experts, during the week of December 16. We believe a half day with each witness may be sufficient, so we can schedule two per day in the same location, but reserve the right to go a bit longer if it proves necessary. The request for dates to depose the purported experts is made without prejudice to our argument that they were not timely disclosed.

Fifth, responding to the separate email from your office of yesterday afternoon, many months ago Mr. Staver planned travel and out of office activities between December 12 and January 1. The only remaining date for which he can be available for a deposition in Orlando is January 2. Please secure a location in Orlando. I am willing to accept a deposition subpoena for him, for the above date and location only.

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*
Liberty Counsel
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*Licensed in Florida and Ohio

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From: Adam Hochschild <adam@hochschildlaw.com>
Sent: Wednesday, November 20, 2019 5:51 PM
To: Tyler Clemons <Tyler.Clemons@splcenter.org>
Cc: Robert B. Hemley <rhemley@gravelshea.com>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Claudia Huerta <claudia.huerta@splcenter.org>; David Dinielli <David.Dinielli@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica

Stone <jessica.stone@splcenter.org>; jswift <jswift@langrock.com>; Julie Jackman <jjackman@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Horatio Mihet <hmihet@lc.org>; Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>; Anthony Duprey <anthony@ndp-law.com>; Michael J. Tierney <mtierney@wadleighlaw.com>
Subject: Re: Jenkins: Deposition Notices

Tyler: I was in the email chain from the beginning; no apologies warranted there. I figured when you said you hadn't yet heard from any other counsel, that you had intended to email everyone. I'm including other counsel here and attaching your deposition notices.

Adam S. Hochschild
Hochschild Law Firm, LLC
314.503.0326
adam@hochschildlaw.com
www.HochschildLaw.com

On Nov 20, 2019, at 5:15 PM, Tyler Clemons <Tyler.Clemons@splcenter.org> wrote:

Hi Adam,

Apologies for leaving you off this email chain. Some defendants have not consented to email service, however, and therefore must be served by mail.

These are not the only depositions that Plaintiffs intend to take.

Best,

<[image001.jpg](#)> **J. Tyler Clemons** they/them/mx
Staff Attorney | LGBTQ Rights & Special Litigation
Southern Poverty Law Center
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Admitted in Louisiana & Maryland

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From: Adam Hochschild [mailto:adam@hochschildlaw.com]

Sent: Wednesday, November 20, 2019 4:09 PM

To: Tyler Clemons

Cc: Robert B. Hemley; Brooks G. McArthur; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy

Subject: Re: Jenkins: Deposition Notices

Tyler: It appears the deposition notices were not emailed to — and accordingly this email chain does not include — counsel for all parties. I suggest you include everyone.

Are these four depositions the only ones plaintiffs intend to take?

Thanks,

Adam

Adam S. Hochschild

Hochschild Law Firm, LLC

314.503.0326

adam@hochschildlaw.com

www.HochschildLaw.com

On Nov 20, 2019, at 4:14 PM, Tyler Clemons <Tyler.Clemons@splcenter.org> wrote:

Hi Bob,

We are serving the witnesses this afternoon and have not yet heard from any other counsel. As you are aware, the court's most recent order gives us very little time to take these depositions. But we will of course keep you and all parties informed of any scheduling changes.

We have no objection to remote participation, either by video or phone. The deposition was scheduled through Legal Media Experts (919-682-7757 or schedule@legalmediaexperts.com); you should contact them to set that up.

Best,

Tyler

<image003.jpg> **J. Tyler Clemons** they/them/mx
Staff Attorney | LGBTQ Rights & Special Litigation
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tyler.clemons@splcenter.org | www.splcenter.org
Admitted in Louisiana & Maryland

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From: Robert B. Hemley [<mailto:rhemley@gravelshea.com>]
Sent: Wednesday, November 20, 2019 2:33 PM
To: Tyler Clemons; Brooks G. McArthur; norman@normansmithlaw.com; adam@hochschildlaw.com
Cc: cs.fergie@myfairpoint.net; Hillary A. Borcharding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy
Subject: RE: Jenkins: Deposition Notices

Tyler: The dates you have selected, December 4 and 5, are unavailable for me, though we may be able to staff the depositions. Can you let me know if these dates have been agreed to by other counsel, or the witnesses, or if the witnesses have been served? Also, if the depositions do go forward, do you have any objection to participation by SKYPE, or other video hookup, and phone? I see the location you have chosen is a Fairfield Suites, so I assume you have made arrangements for a conference room. Please provide the details of that and a contact person. Please let me know as soon as possible so we can make necessary arrangements and/or approach the court if necessary. Thank you.

<image005.jpg> **Robert B. Hemley** | *Shareholder*
Gravel & Shea PC
76 St. Paul Street, 7th Floor | P.O. Box 369 | Burlington, VT 05401
T: 802-658-0220 | F: 802-658-1456
rhemley@gravelshea.com | www.gravelshea.com
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From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Wednesday, November 20, 2019 3:21 PM
To: Brooks G. McArthur <bmcarthur@jarvismcarthur.com>;
norman@normansmithlaw.com; adam@hochschildlaw.com; Robert B. Hemley
<rhemley@gravelshea.com>
Cc: cs.fergie@myfairpoint.net; Hillary A. Borcharding <hborcharding@gravelshea.com>;
Matthew D. Preedom <mpreedom@gravelshea.com>; Linda Bradford Barron
<lbarron@gravelshea.com>; Claudia Huerta <claudia.huerta@splcenter.org>; David
Dinielli <David.Dinielli@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Emily
Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica
Stone <jessica.stone@splcenter.org>; jswift <jswift@langrock.com>; Julie Jackman
<jjackman@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; Maya Rajaratnam
<maya.rajaratnam@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; Scott
McCoy <Scott.McCoy@splcenter.org>
Subject: Jenkins: Deposition Notices

Counsel:

Please find attached deposition notices for Joleen Booth, William Sidebottom, Debbie Thurman, and Sandy Sturgill in *Jenkins v. Miller*, No. 2:12-cv-184 (D. Vt.).

Best,

<image006.jpg> **J. Tyler Clemons** they/them/mx
Staff Attorney | LGBTQ Rights & Special Litigation
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T 504.526.1530 C 504.258.4290 F 504.486.8947
tyler.clemons@splcenter.org | www.splcenter.org
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Horatio Mihet

From: Horatio Mihet
Sent: Thursday, December 19, 2019 11:51 AM
To: Robert B. Hemley; 'Maya Rajaratnam'; Diego Soto; Brooks G. McArthur; Anthony Duprey; Daniel Schmid; Roger Gannam; Adam Hochschild; Norman C. Smith; Toddy Ferguson; Hillary A. Borcharding; Linda Bradford Barron; Matthew D. Preedom; Michael J. Tierney
Cc: Beth Littrell; Claudia Huerta; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Sarah Star; Scott McCoy; srs; Tyler Clemons
Subject: RE: Jenkins: Virginia Depositions

Counsel for LC and Lindevaldsen are available, as is witness Sidebottom, which we will represent for purposes of his deposition.

HGM

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

PO Box 540774
Orlando, FL 32854
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(407) 875-0770 fax

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Offices in DC, FL, and VA

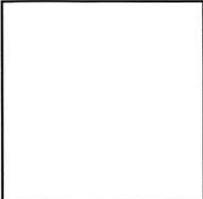
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From: Robert B. Hemley <rhemley@gravelshea.com>
Sent: Thursday, December 19, 2019 10:54 AM
To: 'Maya Rajaratnam' <maya.rajaratnam@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Brooks G. McArthur <bmcArthur@jarvismcarthur.com>; Anthony Duprey <anthony@ndp-law.com>; Daniel Schmid <daniel@lc.org>; Horatio Mihet <hmihet@lc.org>; Roger Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman C. Smith <norman@normansmithlaw.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Michael J. Tierney <mtierney@wadleighlaw.com>
Cc: Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; jswift <jswift@langrock.com>; Julie Jackman <jjackman@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; srs <srs@sarahstarlaw.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>
Subject: RE: Jenkins: Virginia Depositions

If we are still in the case by then, and the Court does not agree to extend discovery, we can be available. We will need to participate by video, so will need details that allow us to do that. Thank you.

EXHIBIT 7

 Robert B. Hemley | *Shareholder*
Gravel & Shea PC

76 St. Paul Street, 7th Floor | P.O. Box 369 | Burlington, VT 05401
T: 802-658-0220 | F: 802-658-1456
rhemley@gravelshea.com | www.gravelshea.com
Biography | Download vCard

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From: Maya Rajaratnam <maya.rajaratnam@splcenter.org>

Sent: Thursday, December 19, 2019 10:26 AM

To: Diego Soto <Diego.Soto@splcenter.org>; Brooks G. McArthur <bmcArthur@jarvismcarthur.com>; Anthony Duprey <anthony@ndp-law.com>; Daniel J. Schmid <dschmid@lc.org>; Horatio Mihet <hmihet@lc.org>; Roger K. Gannam <rgannam@LC.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman C. Smith <norman@normansmithlaw.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Hillary A. Borcharding <hborcherding@gravelshea.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Robert B. Hemley <rhemley@gravelshea.com>; Michael J. Tierney <mtierney@wadleighlaw.com>

Cc: Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; jswift <jswift@langrock.com>; Julie Jackman <jjackman@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; srs <srs@sarahstarlaw.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>

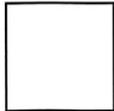
Subject: RE: Jenkins: Virginia Depositions

Good morning,

Please let me know if there are problems with these dates. We would like to inform the deponents by tomorrow at the latest, before everyone leaves for the holidays.

Best,

Maya

 **Maya Rajaratnam** she/her/hers
Law Fellow | LGBTQ Rights & Special Litigation
Southern Poverty Law Center

T 334.956.8307 C 334.398.0328
maya.rajaratnam@splcenter.org | www.splcenter.org
Admitted in Alabama

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From: Maya Rajaratnam

Sent: Wednesday, December 18, 2019 9:54 AM

To: Diego Soto <diego.soto@splcenter.org>; Brooks G. McArthur <bmcArthur@jarvismcarthur.com>; Anthony Duprey <anthony@ndp-law.com>; Daniel J. Schmid <dschmid@lc.org>; Horatio Mihet <hmihet@lc.org>; Roger K. Gannam <rgannam@LC.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman C. Smith <norman@normansmithlaw.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Hillary A. Borcharding <hborcherding@gravelshea.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Matthew D. Preedom

<mpreedom@gravelshea.com>; Robert B. Hemley <rhemley@gravelshea.com>; Michael J. Tierney <mtierney@wadleighlaw.com>

Cc: Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; jswift <jswift@langrock.com>; Julie Jackman <jjackman@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <scott.mccoy@splcenter.org>; srs <srs@sarahstarlaw.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: Jenkins: Virginia Depositions

Counsel –

Plaintiffs propose the following deposition schedule for the week of Jan. 13, 2020, in Virginia:

- Jan. 14 (Virginia Beach)
 - 9 am - Joleen Booth
- Jan. 15 (Lynchburg)
 - 9 am – William Sidebottom
 - 12 pm – Sandy Sturgill
- Jan. 16 (Lynchburg)
 - 9 am – Janet Stasulli
- Jan. 17 (Lynchburg)
 - 9 am – Debbie Thurman

Please let me know if this works with your schedules. We can set up a call-in number if necessary.

Best,

Maya



Maya Rajaratnam she/her/hers
Law Fellow | LGBTQ Rights & Special Litigation
Southern Poverty Law Center
T 334.956.8307 C 334.398.0328
maya.rajaratnam@splcenter.org | www.splcenter.org
Admitted in Alabama

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Horatio Mihet

From: Horatio Mihet
Sent: Thursday, January 9, 2020 10:21 AM
To: Diego Soto; Adam Hochschild
Cc: Tyler Clemons; Maya Rajaratnam; Daniel Schmid; Roger Gannam; Brooks G. McArthur; Anthony Duprey; Norman C. Smith; Robert B. Hemley; Hillary A. Borcharding; Michael J. Tierney; Scott McCoy; flangrock; Sarah Star; srs; Claudia Huerta; Jessica Stone; Beth Littrell; jswift; Emily Joselson; Linda Bradford Barron; Matthew D. Freedom; Toddy Ferguson
Subject: RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

Diego – responding to your four points in order:

- 1) We consider all currently scheduled and noticed depositions to be cancelled and to be re-scheduled after Feb. 5.
- 2) We agree that March 9 makes the most sense for the “60 days” deadline to submit a modified schedule, and is the likeliest date the Court intended. We would not oppose a motion to clarify, requesting the deadline to be on that date.
- 3) We don’t think a separate motion to extend current discovery deadlines is necessary. The Court clearly intended and anticipated that discovery deadlines would be extended through the modified schedule to be submitted by the parties. There is no other way to read the Court’s Order, and it would make no sense to require the parties to submit an agreed modified discovery schedule if the Court intended to hold the parties to the current March 2 deadline. In fact, the Court has indicated that it is extending discovery deadlines to accommodate change in counsel for RUL/Zodhiates/Hyden. If you wish to include this understanding in your motion to clarify (#2), we would not oppose.
- 4) We take no position on the matters you raise in item 4.

HGM

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

PO Box 540774
Orlando, FL 32854
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(407) 875-0770 fax

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Offices in DC, FL, and VA

*Licensed in Florida and Ohio

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From: Diego Soto <Diego.Soto@splcenter.org>
Sent: Wednesday, January 8, 2020 4:31 PM

EXHIBIT 8

To: Adam Hochschild <adam@hochschildlaw.com>; Horatio Mihet <hmihet@lc.org>
Cc: Tyler Clemons <Tyler.Clemons@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Brooks G. McArthur <bmcArthur@jarvismcarthur.com>; Anthony Duprey <Anthony@ndp-law.com>; Norman C. Smith <norman@normansmithlaw.com>; Robert B. Hemley <rhemley@gravelshea.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; flangrock <flangrock@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; srs <srs@sarahstarlaw.com>; Claudia Huerta <claudia.huerta@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; jswift <jswift@langrock.com>; Emily Joselson <ejoselson@langrock.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>
Subject: RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

Counsel:

Four matters for your consideration. Please let me know by close of business tomorrow your client’s positions on these matters.

1. Plaintiffs agree to cancel next week’s depositions in light of the Court’s order allowing the RUL Defendants 30 days to find new counsel. Plaintiffs will work with Defendants to schedule depositions after the RUL Defendants acquire new counsel or after the February 5 deadline expires without an appearance by new counsel.

2. Plaintiffs intend to seek clarification of the deadline by which the parties must file the joint proposed modified discovery schedule. Plaintiffs read three possible deadlines:

- a. Within 60 days of the Court’s order (i.e., Monday, March 9, 2020)
- b. Thursday, February 6 (see page 2)
- c. Friday, February 7 (see pages 5–6 and docket text)

Given the Court’s desire “to minimize further back-and-forth regarding discovery,” Op. & Order at 5, ECF 450, and consistent use of the phrase “within 60 days,” Plaintiffs believe the Court intended that the proposed schedule be filed within 60 days of the Court’s January 7 order (i.e., Monday, March 9, 2020). Such a deadline would ensure that, should the RUL Defendants acquire new counsel by the February 5 deadline, new counsel would be able to participate in negotiations over the proposed schedule. A February 6 or 7 deadline for the proposed schedule would make new counsel’s participation in negotiating the proposed schedule much less likely.

3. Given the discovery deadlines between today and March 9, the likelihood that those deadlines would expire before the proposed schedule is even filed, and the Court’s recognition of “the importance of moving along the discovery process,” Op. & Order at 5, ECF 450, Plaintiffs intend to file a motion to extend the current discovery schedule by 30 days (to account for the 30 days given to the RUL Defendants to find new counsel) or in the alternative by 60 days (to make the need for further extensions less likely after the RUL Defendants’ February 5 deadline to find new counsel expires). I have set out the proposed schedules below. After the RUL Defendants acquire new counsel or after the February 5 deadline expires without an appearance by new counsel, the parties would meet and confer as ordered to determine whether any further modifications are needed. Plaintiffs do not believe the Court put discovery on hold, stayed discovery, or otherwise altered requirements to respond to discovery requests pursuant to the federal rules. Plaintiffs believe discovery can continue before February 5 except where it would prejudice an unrepresented party.

	Current deadline	30-day extension	60-day extension	Explanation
Deadline for Defendant Philip	Monday, January 13, 2020	Wednesday, February 12, 2020	Friday, March 13, 2020	30/60-day extension

Zodhiates to respond to Plaintiff Janet Jenkins's Motion for Partial Summary Judgment on Count One				
Deadline to serve all interrogatories and requests for production	Monday, January 20, 2019 (ECF 425 ¶1)	Wednesday, February 19, 2020	Friday, March 20, 2020	6 weeks before the close of discovery (ECF 425 ¶1)
Deadline for depositions of all witnesses (fact and expert)	Monday, March 2, 2020 (ECF 425 ¶4)	Wednesday, April 1, 2020	Friday, May 1, 2020	Same day as deadline to complete all discovery
Deadline to complete all discovery	Monday, March 2, 2020 (ECF 425 ¶5)	Wednesday, April 1, 2020	Friday, May 1, 2020	30/60-day extension
Deadline to serve all requests for admission	Monday, March 30, 2020 (ECF 425 ¶6)	Wednesday, April 29, 2020	Friday, May 29, 2020	4 weeks after close of all discovery (ECF 425 ¶6)
Deadline to file motions, including summary judgment motions but excluding motions relating to the conduct of trial	Monday, April 13, 2020 (ECF 425 ¶2)	Wednesday, May 13, 2020	Friday, June 12, 2020	6 weeks after close of all discovery (ECF 320 ¶15)
Deadline for trial readiness	Monday, June 1, 2020 (ECF 425 ¶7)	Monday, July 6, 2020	Monday, August 3, 2020	First Monday after 30/60-day extension

4. Plaintiffs also intend to file a motion asking the Court to order three things:

- a. Gravel & Shea PC to serve on the RUL Defendants the Court's order requiring them to find new counsel by February 5 and to file proof of service;
- b. If Zodhiates and Hyden do not secure counsel by February 5, they must file notices of pro se appearances per Local Rule 11(a);
- c. If RUL does not secure counsel by February 5, it must file an affidavit explaining why it did not secure counsel by February 5, given that it cannot proceed pro se per Local Rule 11(b).

Also, I noticed that Bob and his colleagues were included in this email chain. Please let me know if you would prefer not to be included in further communications about this case.

Sincerely,
Diego



Diego Soto he/him/his
Staff Attorney | LGBTQ Rights & Special Litigation
Southern Poverty Law Center
T 334.956.8427 C 334.604.1414 F 334.956.8481
diego.soto@splcenter.org | www.splcenter.org
Admitted in Alabama and the District of Columbia

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From: Adam Hochschild <adam@hochschildlaw.com>

Sent: Wednesday, January 8, 2020 2:23 PM

To: Horatio Mihet <hmihet@lc.org>

Cc: Tyler Clemons <Tyler.Clemons@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; Anthony Duprey <Anthony@ndp-law.com>; Norman C. Smith <norman@normansmithlaw.com>; Robert B. Hemley <rhemley@gravelshea.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; flangrock <flangrock@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; srs <srs@sarahstarlaw.com>; Claudia Huerta <claudia.huerta@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; jswift <jswift@langrock.com>; Emily Joselson <ejoselson@langrock.com>; Linda Bradford Barron <lbrannon@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>

Subject: Re: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

I concur with Harry.

Adam S. Hochschild
Hochschild Law Firm, LLC
314.503.0326
adam@hochschildlaw.com
www.HochschildLaw.com

On Jan 8, 2020, at 11:36 AM, Horatio Mihet <hmihet@lc.org> wrote:

Tyler and Company:

We read Judge Sessions' Order of yesterday (below), and the one on Monday granting leave to withdraw to Zodiates/Hyden/RU counsel, as intending to put discovery on hold for thirty days, so as to give new counsel time to enter an appearance, attend depositions and otherwise engage in discovery. The new discovery order to be worked out and submitted by the parties on February 7 would reflect this and push the discovery deadline out to compensate for the time lost.

Under these circumstances, please confirm TODAY that you are cancelling and rescheduling all depositions currently scheduled for next week. As you know, Zodiates/Hyden/RU are currently unrepresented, and will likely be unrepresented next week, since the Court has given them until Feb. 5 to obtain new counsel. Although I don't represent these parties, it will be prejudicial to them to be unrepresented at these depositions, and it would be prejudicial to us and everyone else to attend depositions that will have to be re-taken. And, in any event, any deposition taken while these parties are unrepresented will not be binding on them, per Rule 32. It would be a waste of everyone's time to take depositions next week, that will then have to be re-taken once the unrepresented parties secure counsel.

If you do not agree to reschedule these depositions, we will (1) ask that any deposition that has to be re-taken be done at Plaintiff's expense (both time and travel); and (2) oppose any extension of the March 2

discovery deadline in the new scheduling order on the ground that Plaintiff did not agree to put discovery on hold to protect the rights of unrepresented parties.

Please let us know today how you intend to proceed.

Kind Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*
Liberty Counsel

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Orlando, FL 32854
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From: cmecfhelpdesk@vtd.uscourts.gov <cmecfhelpdesk@vtd.uscourts.gov>

Sent: Tuesday, January 7, 2020 4:07 PM

To: Courtmail@vtd.uscourts.gov

Subject: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion Amend/Modify the Discovery Schedule/Order

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Case Name: Jenkins v. Miller et al

Case Number: [2:12-cv-00184-wks](#)

Filer:

Document Number: [450](#)

Docket Text:

OPINION AND ORDER granting [431] MOTION to Amend the Discovery Schedule/Order re: deadline to serve all interrogatories and requests to produce; granting [432] MOTION to Amend the Discovery Schedule/Order re: the Number of Depositions Plaintiffs Are Permitted ; denying as moot [440] Motion to Stay Discovery Deadlines; one modified proposed discovery schedule is to be

submitted by dfts and plffs within 60 days of this Order (by 2/7/2020). Signed by Judge William K. Sessions III on 1/7/2020. (jam)

2:12-cv-00184-wks Notice has been electronically mailed to:

Ritchie E. Berger, Esq rberger@dinse.com, amitchell@dinse.com, dwilliams@dinse.com

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Adam S. Hochschild, Esq adam@hochschildlaw.com

2:12-cv-00184-wks Notice has been delivered by other means to:

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21f06dc5d0c63b7950a5756e4d51027044d0063073784483944ba56a69c3]]

Horatio Mihet

From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Thursday, April 4, 2019 8:42 AM
To: Horatio Mihet
Cc: Beth Jacob
Subject: Re: Finishing Meet & Confer

Hi Harry,

Friday, April 12 at 4 Eastern will work. I look forward to finishing our meet & confer then.

Best,

Tyler

J. Tyler Clemons
Staff Attorney, LGBT Rights/Special Litigation
Southern Poverty Law Center
201 St. Charles Avenue Suite 2000
New Orleans, Louisiana 70170
t (504)526-1530 c (504)258-4290 f (504)486-8947
Admitted in Louisiana and Maryland.

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From: Horatio Mihet <hmihet@lc.org>
Sent: Wednesday, April 3, 2019 5:14 PM
To: Tyler Clemons
Cc: Beth Jacob
Subject: RE: Finishing Meet & Confer

EXHIBIT 9

Tyler – I'm on a deposition break and responding to you. I was involved in the discovery responses and document gathering, so it wouldn't make sense to switch to one of my colleagues now, especially since we've already done much of the meet and confer without them. I need to see it through. I note that you took an extended break from the process, at a time when I would have been able to participate on a timelier basis. I am sorry that my schedule and yours did not match up well on this.

The discovery cutoff is in late August, almost five months away. Are you really not able to wait the extra 12 days between your April 5 and my April 17?

I don't like the sudden rush in the middle of my very hectic deposition schedule, but as a show of good faith, and if it will help avoid a needless dispute, I can make an extra effort and be available on Friday, April 12 at 4 Eastern. Does that work?

HGM

Horatio G. Mihet, Esq.*

*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

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(407) 875-1776 phone

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>

Sent: Wednesday, April 3, 2019 10:41 AM

To: Horatio Mihet <hmihet@lc.org>

Cc: Beth Jacob <beth.jacob@splcenter.org>

Subject: RE: Finishing Meet & Confer

Good morning Harry,

It is imperative that we finish this as soon as possible. While I understand that you are busy, we have been attempting to schedule and complete this meet and confer since October 25, 2018. Please indicate a time within the next week when you are willing to meet, or designate one of your colleagues who can meet within the next on your behalf, by close of business on Friday, April 5. Otherwise, we will seek relief from the court.

Best,

Tyler

J. Tyler Clemons (*he/him/his*)

Staff Attorney, LGBT Rights/Special Litigation

[Southern Poverty Law Center](#)

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New Orleans, Louisiana 70170

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From: Tyler Clemons

Sent: Friday, March 29, 2019 11:07 AM

To: 'Horatio Mihet'

Cc: Beth Jacob

Subject: RE: Finishing Meet & Confer

Hi Harry,

Thanks for your response. While I understand that you are busy with other matters, that delay is just too long—we have impending discovery deadlines and need to move this case forward. Should I speak to one of your co-counsel, Daniel Schmid or Roger Gannam, instead?

Best,

Tyler

J. Tyler Clemons (*he/him/his*)

Staff Attorney, LGBT Rights/Special Litigation

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From: Horatio Mihet [<mailto:hmihet@lc.org>]

Sent: Friday, March 22, 2019 9:45 AM

To: Tyler Clemons

Cc: Beth Jacob; Claudia Huerta

Subject: RE: Finishing Meet & Confer

Tyler – thanks for getting back to me. I am eager to finish our discussion, but unfortunately you have caught me this time on a marathon deposition schedule is a major case where discovery closes April 15, and where I am engaged in day-long depositions every business day, coast to coast, between now and then. The first availability I have at this point is April 17 in the afternoon your time (I will be on the West Coast). My apologies for the delay – I understand that this is about 12 days farther out than you requested. Thanks for understanding.

HGM

Horatio G. Mihet, Esq.*

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>

Sent: Thursday, March 21, 2019 9:53 AM

To: Horatio Mihet <hmihet@lc.org>

Cc: Beth Jacob <beth.jacob@splcenter.org>; Claudia Huerta <claudia.huerta@splcenter.org>

Subject: Finishing Meet & Confer

Good morning Harry,

We need to finish our meet and confer regarding Ms. Lindevaldsen and Liberty Counsel's production in the *Jenkins* litigation in Vermont. Please pick a couple of hours over the next two weeks (Tuesday, March 26 through Friday, April 5) that we could do so and I will make myself available.

Thanks,

Tyler

J. Tyler Clemons (*he/him/his*)

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

_____)	
JANET JENKINS, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 2:12-CV-00184
)	
KENNETH L. MILLER, ET AL.)	
)	
Defendants.)	
_____)	

INDEX OF EXHIBITS FOR DEFENDANTS LIBERTY COUNSEL, INC. AND RENA LINDEVALDSEN'S VERIFIED REPLY IN SUPPORT OF THEIR CROSS-MOTION FOR SANCTIONS AGAINST PLAINTIFF AND HER COUNSEL

EXHIBIT

DESCRIPTION

- | | |
|---|---|
| 1 | D. Soto email enclosing Plaintiff's document production, 3/20/2020 |
| 2 | D. Soto email enclosing Plaintiff's document production, 4/10/2020 |
| 3 | Email communications discussing protective order, April – July 2019 |
| 4 | Email communications discussing privileged document clawback, June 2019 |
| 5 | Email communications discussing protective order, July - August 2019 |
| 6 | Email communications discussing depositions, November 2019 |
| 7 | Email communications discussing depositions, December 2019 |
| 8 | Email communications discussing depositions, January 2020 |
| 9 | Email communications discussing discovery meet and confer, March – April 2020 |